Montana Code Annotated
2009

Local Government
Military Affairs & Disaster and Emergency Services
Elections

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MONTANA CODE ANNOTATED

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Code Commissioner & Director of Legal Services
Gregory J. Petesch

Staff Attorneys
Bart Campbell
Jeremy Gersovitz
Lee Heiman
Valencia Lane
Lisa Mecklenberg Jackson
David Niss
Doug Sternberg, Legal Researcher

Legislative Technical Editors
Connie Dixon, Chief Legislative Technical Editor
Sally Bush, Senior Legislative Technical Editor
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Hank Trenk, Director

Applications Development
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Central Services Office
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Documents Services Manager
Ann Patten

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Kevin Hayes

Proofreaders
Kip Davis, Senior Proofreader
Melissa Curd

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7-1-101. Self-government powers. As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

History: En. 47A-7-101 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-101.

Cross-References

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7-1-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include but are not limited to those services and functions which general power government units are authorized to provide or perform.

History: En. 47A-7-102 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-102.

7-1-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

History: En. 47A-7-103 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-103.

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.

7-1-104. Legislative power vested in legislative bodies. The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution.

History: En. 47A-7-104 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-104.

Cross-References

Local government ordinances and resolutions, Title 7, ch. 5, part 1.

7-1-105. State law applicable until superseded. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

History: En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-105.

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-106.

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.

7-1-107 through 7-1-110 reserved.

7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201; amd. Sec. 3, Ch. 375, L. 1983; amd. Sec. 22, Ch. 418, L. 1995; amd. Sec. 1, Ch. 446, L. 2001; amd. Sec. 1, Ch. 217, L. 2003; amd. Sec. 2, Ch. 466, L. 2003; amd. Sec. 1, Ch. 561, L. 2003; amd. Sec. 2, Ch. 395, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 395 inserted (15) prohibiting regulation of commercial fertilizers or soil amendments under certain circumstances; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.
Self-government powers, Art. XI, sec. 6, Mont. Const.
Public employee pensions, Title 19.
School finance, Title 20, ch. 9.
Montana criminal code, Title 45.
Concealed weapons — offense, 45-8-315 through 45-8-317.
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Traffic offenses — local powers, 61-8-103.
Public utilities and carriers — Public Service Commission — rates and charges, Title 69.
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Certification of environmental capability and public need — major facility siting, 75-20-201.

7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) the power to authorize a tax on income or the sale of goods or services, except that, subject to 15-10-420, this section may not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) the power to regulate private activity beyond its geographic limits;

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation affects the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;

(4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) the power to regulate any form of gambling, lotteries, or gift enterprises.

History: **En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-202; amd. Sec. 3, Ch. 584, L. 1999.**

Cross-References

Municipal Courts, Title 3, ch. 6.
Justices' Courts, Title 3, ch. 10.
City Courts, Title 3, ch. 11.
Resort tax, Title 7, ch. 6, part 15.
Local government taxation — generally, Title 7, ch. 6, part 25 (counties); Title 7, ch. 6, part 44 (municipalities).
Interlocal cooperation agreements, Title 7, ch. 11.
Gambling, Title 23, ch. 5.
Extrajurisdictional planning and zoning permitted, 76-1-505.

7-1-113. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: **En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-203.**

7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) all state laws providing for the incorporation or disincorporation of cities and towns, for the annexation, disannexation, or exclusion of territory from a city or town, for the creation, abandonment, or boundary alteration of counties, and for city-county consolidation;

(b) Title 7, chapter 3, part 1;

(c) all laws establishing legislative procedures or requirements for units of local government;

(d) all laws regulating the election of local officials;

(e) all laws that require or regulate planning or zoning;

(f) any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) except as provided in subsection (3), any law regulating the budget, finance, or borrowing procedures and powers of local governments;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

(3) (a) Notwithstanding the provisions of subsection (1)(g) and except as provided in subsection (3)(b), self-governing local government units are not subject to the mill levy limits established by state law.

(b) The provisions of 15-10-420 apply to self-governing local government units.

History: **En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-204; amd. Sec. 29, Ch. 42, L. 1997; amd. Sec. 4, Ch. 584, L. 1999; amd. Sec. 42, Ch. 278, L. 2001.**

Cross-References

Planning and zoning, Title 76, ch. 2.

7-1-115. Governmental right to sue firearms or ammunition manufacturer, trade association, or dealer in tort or for abatement or injunctive relief. The governmental right to bring suit against a firearms or ammunition manufacturer, trade association, or dealer for abatement, injunctive relief, or tort damages resulting from or relating to the design, manufacture, marketing, or sale of firearms or ammunition sold to the public is reserved exclusively to the state and may not be exercised by a local governmental unit. The state may sue under this section on its own behalf or on behalf of a local governmental unit, or both.

History: En. Sec. 2, Ch. 581, L. 1999.

7-1-116 through 7-1-119 reserved.

7-1-120. Repealed. Sec. 10, Ch. 268, L. 2005.

History: En. Sec. 1, Ch. 471, L. 2003.

Part 2
Boards

7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, Title 7, chapter 11, part 10, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

(a) the number of board, district, or commission members;

(b) the terms of the members;

(c) whether members are entitled to mileage, per diem, expenses, and salary; and

(d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, district, or commission may be assigned responsibility for a department or service district.

(b) An administrative board, district, or commission may:

(i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;

(ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.

(3) (a) Administrative boards, districts, and commissions may be made elective.

(b) If an administrative board is made elective and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. A position for which there were no nominees must be filled by appointment by the county commissioners for the same term as if the position were filled by election. If there is only one nominee for a position, the nominee may be declared elected by acclamation.

(4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.

(5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(6) The county commissioners shall maintain a register of appointments, including:

(a) the name of the board, district, or commission;

(b) the date of appointment and confirmation, if any is required;

(c) the length of term;

(d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and

(e) the date, time, and place of regularly scheduled meetings.

(7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.

(9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.

(10) Two or more local governments may provide for joint boards, districts, or commissions to be established by interlocal agreements.

(11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting unless the resolution creating the board, district, or commission specifies otherwise.

(12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional qualifications for membership.

(15) A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.

(16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners.

(17) If a municipality creates a special district in accordance with Title 7, chapter 11, part 10, the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board.

History: En. Sec. 1, Ch. 543, L. 1995; amd. Sec. 1, Ch. 254, L. 1999; amd. Sec. 22, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (1) in first sentence inserted reference to Title 7, chapter 11, part 10; inserted (17) requiring a municipality to comply with this section if a special district is governed by a separate board; and made minor changes in style. Amendment effective July 1, 2009.

7-1-202. Creation of new boards. Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:

(1) county building commission;
(2) cemetery districts;
(3) county fair commission;
(4) mosquito control board;
(5) museum board;
(6) board of park commissioners;
(7) road district;
(8) rodent control board;
(9) solid waste district;
(10) television district;
(11) weed management district.

History: En. Sec. 2, Ch. 543, L. 1995; amd. Sec. 10, Ch. 114, L. 2003; amd. Sec. 23, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 inserted (7) allowing creation of a road district; and made minor changes in style. Amendment effective July 1, 2009.

7-1-203. County commissioners to assume duties of administrative boards, districts, and commissions. (1) If the minimum number of qualified persons is not available for membership on an administrative board, district, or commission, the county commissioners may by resolution, at a public meeting, assume the duties of the administrative board, district, or commission and may act as that board, district, or commission with the same powers and duties as that board, district, or commission.

(2) County commissioners, acting in the capacity of an administrative board, district, or commission may not receive any compensation in addition to their compensation as county commissioners.

History: En. Sec. 3, Ch. 543, L. 1995.

Parts 3 through 20 reserved

Part 21
Counties

Part Cross-References

County boundary change, Art. XI, sec. 2, Mont. Const.
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Creation, alteration, and abandonment of counties, Title 7, ch. 2, parts 1 and 21, 22, and 24 through 27.
Operational status of self-government city-county consolidated local governments, 7-5-201.

7-1-2101. Nature of county. (1) A county is the largest political division of the state having corporate power.

(2) Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed.

History: (1)En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R.C.M. 1921; Cal. Pol. C. Sec. 3901; re-en. Sec. 4293, R.C.M. 1935; Sec. 16-101, R.C.M. 1947; (2)En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R.C.M. 1921; Cal. Pol. C. Sec. 4000; re-en. Sec. 4441, R.C.M. 1935; Sec. 16-801, R.C.M. 1947; R.C.M. 1947, 16-101, 16-801.

Cross-References

General powers of local governments, Art. XI, sec. 4, Mont. Const.
Powers of counties — liberal construction, Art. XI, sec. 6, Mont. Const.
Powers of self-governing local governments, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-1-2102. Name of county. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. This provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R.C.M. 1921; Cal. Pol. C. Sec. 4002; re-en. Sec. 4443, R.C.M. 1935; R.C.M. 1947, 16-803.

Cross-References

Change of name of county, Title 7, ch. 2, part 25.

7-1-2103. County powers. A county has power to:

(1) sue and be sued;

(2) purchase and hold lands within its limits;

(3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;

(4) make orders for the disposition or use of its property that the interests of its inhabitants require;

(5) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R.C.M. 1921; Cal. Pol. C. Sec. 4003; re-en. Sec. 4444, R.C.M. 1935; R.C.M. 1947, 16-804; amd. Sec. 5, Ch. 584, L. 1999; amd. Sec. 1, Ch. 453, L. 2005.

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.
County control of litter, 7-5-2109.
County authority to establish speed limits, 7-14-2113.
Restriction on local government regulation of firearms, 45-8-351.

7-1-2104. Exercise of county power. A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R.C.M. 1921; Cal. Pol. C. Sec. 4001; re-en. Sec. 4442, R.C.M. 1935; R.C.M. 1947, 16-802.

7-1-2105. Finding — contract authority. (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.

(2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.

(3) Section 7-1-2101 states that a county has the powers specified in this title or in special statutes and has powers that are necessarily implied from those expressed powers.

(4) Section 7-1-2103 states that a county has the power to make contracts that may be necessary to the exercise of its powers.

(5) Section 7-1-2104 states that a county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

(6) Therefore, the legislature finds that it is within a county's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the county be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

History: En. Sec. 1, Ch. 198, L. 2005.

Cross-References

Public contracts generally, Title 18, ch. 1.

Local government adoption of procurement provisions, 18-4-124.

7-1-2106 through 7-1-2110 reserved.

7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers not otherwise provided for and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-332(7);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001;

(i) 6% of the taxable value of the county on January 1 of each tax year;

(j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702; and

(k) 33 ⅓% of the value of bentonite produced during the previous year as provided in 15-39-110(12) and as reported under 15-39-101.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R.C.M. 1921; re-en. Sec. 4741, R.C.M. 1935; R.C.M. 1947, 16-2419(part); amd. Sec. 38, Ch. 614, L. 1981; amd. Sec. 18, Ch. 695, L. 1985; amd. Sec. 1, Ch. 611, L. 1987; amd. Sec. 1, Ch. 655, L. 1987; amd. Sec. 1, Ch. 612, L. 1989; amd. Sec. 66, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 161, L. 1991; amd. Sec. 10, Ch. 9, Sp. L. November 1993; amd. Sec. 21, Ch. 451, L. 1995; amd. Sec. 1, Ch. 121, L. 1997; amd. Sec. 1, Ch. 466, L. 1997; amd. Sec. 1, Ch. 496, L. 1997; amd. Sec. 21, Ch. 426, L. 1999; amd.

Sec. 4, Ch. 515, L. 1999; amd. Sec. 16, Ch. 556, L. 1999; amd. Sec. 4, Ch. 7, L. 2001; amd. Sec. 3, Ch. 522, L. 2003; amd. Sec. 8, Ch. 130, L. 2005; amd. Sec. 2, Ch. 44, L. 2007; amd. Sec. 1, Ch. 57, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 57 in (2)(k) near end substituted "15-39-110(12)" for "15-39-110(14)". Amendment effective March 25, 2009.

Cross-References

City-county consolidated units of local government — Consolidated Municipality Commission, 7-3-1214.

7-1-2112. Designation of county classification by county commissioners. (1) The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of 7-1-2111.

(2) Such classification shall not change the government of the county then in existence until the next succeeding first Monday in January.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R.C.M. 1921; re-en. Sec. 4742, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974; R.C.M. 1947, 16-2420.

7-1-2113 through 7-1-2120 reserved.

7-1-2121. Publication and content of notice — proof of publication. Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must:

(i) be of general circulation;

(ii) be published at least once a week;

(iii) be published in the county where the hearing or other action will take place; and

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

History: En. Sec. 1, Ch. 349, L. 1985; amd. Sec. 1, Ch. 354, L. 2001; amd. Sec. 1, Ch. 444, L. 2005; amd. Sec. 1, Ch. 439, L. 2007.

Cross-References

Consolidation of fire districts, 7-33-2120.

County printing, Title 18, ch. 7, part 4.

7-1-2122. Mail notice. (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.

(2) The notice shall contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

History: **En. Sec. 2, Ch. 349, L. 1985.**

Parts 22 through 39 reserved

Part 40

Payment of Construction Contractors and Subcontractors

7-1-4001. Payment of contractors and subcontractors. Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are defined in 28-2-2101, for services performed by a construction contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

History: **En. Sec. 1, Ch. 470, L. 1999.**

Part 41

Municipalities

Part Cross-References

Operational status of self-government city-county consolidated local governments, 7-5-201.

7-1-4101. Nature of municipalities. A city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted.

History: **En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R.C.M. 1921; Cal Pol. C. Sec. 4354; re-en. Sec. 4955, R.C.M. 1935; R.C.M. 1947, 11-101.**

Cross-References

Powers of incorporated cities and towns to be liberally construed, Art. XI, sec. 4(2), Mont. Const.

7-1-4102. Name of municipality. Every city or town organized under this title is entitled "the city of ...." (naming it) or "the town of ...." (naming it) and by such name has perpetual succession.

History: **En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).**

7-1-4103. Repealed. Sec. 30, Ch. 455, L. 1979.

History: **En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).**

7-1-4104. Repealed. Sec. 30, Ch. 455, L. 1979.

History: **(1)En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R.C.M. 1921; Cal. Pol. C. Sec. 4355; re-en. Sec. 4956, R.C.M. 1935; Sec. 11-102, R.C.M. 1947; (2)En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R.C.M. 1921; re-en. Sec. 4957, R.C.M. 1935; Sec. 11-103, R.C.M. 1947; R.C.M. 1947, 11-102, 11-103.**

7-1-4105. Finding — contract authority. (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.

(2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.

(3) Section 7-1-4124 states that a municipality with general powers has the power, subject to the provisions of state law, to contract with persons and to hire, direct, and discharge employees.

(4) Therefore, the legislature finds that it is within a local government's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the local government be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

History: En. Sec. 2, Ch. 198, L. 2005.

Cross-References

Public contracts generally, Title 18, ch. 1.

Local government adoption of procurement provisions, 18-4-124.

7-1-4106 through 7-1-4110 reserved.

7-1-4111. Classification of municipalities. (1) Every city having a population of 10,000 or more is a city of the first class.

(2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.

(3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.

(4) Every municipal corporation having a population of less than 1,000 and more than 300 is a town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part); amd. Sec. 1, Ch. 250, L. 1979.

7-1-4112. Exceptions from classification system. Notwithstanding the provisions of 7-1-4111:

(1) every municipal corporation having a population of more than 9,000 and less than 10,000 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a first-class city or a second-class city;

(2) every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and

(3) every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council pursuant to 7-1-4114 through 7-1-4118, be either a city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part); amd. Sec. 1, Ch. 15, L. 2003.

7-1-4113. Basis of classification. The census taken under the direction of the congress of the United States in 1890 and every 10 years thereafter shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907; re-en. Sec. 4960, R.C.M. 1921; re-en. Sec. 4960, R.C.M. 1935; R.C.M. 1947, 11-202.

7-1-4114. Advance in classification of municipalities. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census that such city or town has the requisite population to entitle it to be classified as provided in 7-1-4111 and 7-1-4112, such city or town must be advanced as provided in 7-1-4115.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907; re-en. Sec. 4969, R.C.M. 1921; re-en. Sec. 4969, R.C.M. 1935; R.C.M. 1947, 11-301.

7-1-4115. Procedure to advance municipal classification. (1) If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon by resolution declare, as the case may be, that:

(a) the town is advanced to a city of the first, second, or third class;

(b) a city of the third class is advanced to a city of the second or first class; or

(c) a city of the second class is advanced to a city of the first class.

(2) The city or town council must file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class; a city of the third class becomes a city of the second or first class; and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907; re-en. Sec. 4970, R.C.M. 1921; re-en. Sec. 4970, R.C.M. 1935; R.C.M. 1947, 11-302.

Cross-References

Firefighters' unified retirement system — effect of reduction in classification, 19-13-210.

7-1-4116. Officers of reclassified municipality. The first election of officers of the new municipal corporation organized under the provisions of 7-1-4114 through 7-1-4118 must be at the first municipal election after reclassification, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907; re-en. Sec. 4971, R.C.M. 1921; re-en. Sec. 4971, R.C.M. 1935; R.C.M. 1947, 11-303; amd. Sec. 2, Ch. 15, L. 2003.

7-1-4117. Status of legislative actions taken prior to reclassification. All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907; re-en. Sec. 4972, R.C.M. 1921; re-en. Sec. 4972, R.C.M. 1935; R.C.M. 1947, 11-304.

7-1-4118. Reduction in classification of municipalities. (1) Whenever it appears by the census taken by the United States, the state, or otherwise that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by resolution declare that such city be reduced to a city of the second class or town as the case may be.

(2) A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns.

(3) The provisions of 7-1-4116 and 7-1-4117 apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R.C.M. 1921; re-en. Sec. 4973, R.C.M. 1935; R.C.M. 1947, 11-305.

7-1-4119 and 7-1-4120 reserved.

7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations on the government.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity that incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out the duties of the records administrator.

(11) "Officer" means a person holding a position with a municipality that is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision.

(19) "Public property" means any property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

History: En. Sec. 1, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 114, L. 1983; amd. Sec. 2, Ch. 354, L. 2001; amd. Sec. 263, Ch. 61, L. 2007.

Cross-References

Qualifications of electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.
Alternative forms of government, Title 7, ch. 3.
Charter form of government, Title 7, ch. 3, part 7.

7-1-4122. Distribution of powers. (1) A municipality has legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the municipality.

(3) Executive powers are vested as provided in the form of government adopted by the municipality.

(4) The judicial powers of a municipality are vested in the municipal court.

History: En. Sec. 23, Ch. 455, L. 1979.

Cross-References

Municipal Courts, Title 3, ch. 6.
City Courts, Title 3, ch. 11.
Definitions of types of local government forms, Title 7, ch. 3.

7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;
(2) secure and promote the general public health and welfare;
(3) provide any service or perform any function authorized or required by state law;
(4) exercise any power granted by state law;
(5) subject to 15-10-420, levy any tax authorized by state law for public or governmental purposes as described in 7-6-2527;
(6) appropriate public funds;
(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;
(8) grant franchises; and
(9) provide for its own organization and the management of its affairs.

History: En. Sec. 24, Ch. 455, L. 1979; amd. Sec. 6, Ch. 584, L. 1999; amd. Sec. 2, Ch. 453, L. 2005.

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.
Resort tax, Title 7, ch. 6, part 15.
Restriction on local government regulation of firearms, 45-8-351.
Authority to enact ordinance concerning driving under influence, 61-8-401.

7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;
(2) sue and be sued;
(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;
(4) contract with persons, corporations, or any other governmental entity;
(5) pay debts and expenses;
(6) borrow money;
(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;
(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;
(9) make grants and loans of money, property, and services for public purposes;
(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;
(11) hire, direct, and discharge employees and appoint and remove members of boards;
(12) ratify any action of the municipality or its officers or employees that could have been approved in advance;
(13) have a corporate seal and flag;
(14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;
(15) initiate a civil action to restrain or enjoin violation of an ordinance;
(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;
(17) conduct a census;
(18) conduct inventories of public property and preparatory studies;
(19) condemn and demolish hazardous structures;
(20) purchase insurance and establish self-insurance plans;
(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines;

(23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and

(24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

History: **En. Sec. 25, Ch. 455, L. 1979; amd. Sec. 1, Ch. 249, L. 1999; amd. Sec. 1, Ch. 125, L. 2001.**

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.

7-1-4125. Limit on liability. (1) As provided in Article II, section 18, of the Montana constitution, a municipality has no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) A local government has the right but not the duty to purchase insurance to protect against claims for injury to a person or property.

(3) Local governments are subject to the provisions of Title 2, chapter 9.

History: **En. Sec. 26, Ch. 455, L. 1979.**

7-1-4126. Administrative rules. The governing body may by ordinance authorize the chief executive to adopt administrative rules. All administrative rules shall be entered in an administrative code that shall be available in the office of the municipality.

History: **En. Sec. 2, Ch. 455, L. 1979.**

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-1-4127. Publication of notice — content — proof. (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which a newspaper is not published, publication may be made by posting in three public places in the municipality that have been designated by ordinance.

(2) The newspaper must:

(a) be of general circulation;

(b) be published at least once a week;

(c) be published in the county where the municipality is located; and

(d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of paid circulation and circulation that is free; and

(iv) the method of distribution.

(3) A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.

(4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(5) In a county where a newspaper does not meet the qualifications in subsection (2), publication must be made in a qualified newspaper in an adjacent county.

(6) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(7) The notice must be published twice, with at least 6 days separating each publication.

(8) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(9) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(10) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

History: **En. Sec. 3, Ch. 455, L. 1979; amd. Sec. 3, Ch. 354, L. 2001; amd. Sec. 1, Ch. 97, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 97 in (2)(a) substituted "circulation" for "paid circulation with a periodicals mailing permit"; inserted (2)(d) specifying content of sworn statement newspaper must submit; inserted (3) describing a newspaper of general circulation; and made minor changes in style. Amendment effective March 25, 2009.

Cross-References

Municipal printing contract, 7-5-4108.

7-1-4128. Repealed. Sec. 70, Ch. 354, L. 2001.

History: En. Sec. 4, Ch. 455, L. 1979.

7-1-4129. Mail notice. (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to 200 or more electors or residents of a municipality.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known.

History: En. Sec. 5, Ch. 455, L. 1979; amd. Sec. 1, Ch. 11, L. 1989.

7-1-4130. Petition. Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, the petition is subject to 7-5-131 through 7-5-137.

History: En. Sec. 6, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 164, L. 1985; amd. Sec. 1, Ch. 359, L. 1991.

Cross-References

Resort tax, Title 7, ch. 6, part 15.

7-1-4131. Public hearing. (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee or hearing examiner to conduct public hearings.

History: En. Sec. 7, Ch. 455, L. 1979.

Cross-References

Right to participate in government process, Art. II, sec. 8, Mont. Const.

Open meetings required, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

History: En. Sec. 8, Ch. 455, L. 1979.

7-1-4133. Signatures. (1) The signatures and addresses on petitions shall be the same as the signatures and addresses on voter registration cards and, if not registered or if not required by law to be an elector, their common signature. If the elector has signed using an initial letter only in place of a name written on the registry card or using a name or the initial letter of a name that is not on the registry card, the signature may nevertheless be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

(2) The signatures on protests and waivers shall be the accepted common signatures.

History: En. Sec. 9, Ch. 455, L. 1979.

7-1-4134. Rights on behalf of government or corporation. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

History: En. Sec. 10, Ch. 455, L. 1979.

7-1-4135. Posting. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document shall be placed on the posting board, and a copy shall be available at the municipal office.

History: En. Sec. 11, Ch. 455, L. 1979.

7-1-4136. Oaths. The chief executive and all elected municipal officers may administer oaths.

History: En. Sec. 12, Ch. 455, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6.

7-1-4137. Oath of office. (1) Every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. Before the officer performs any official duties, the oath of office, certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection (2), an appointed officer shall file the oath with the city clerk.

(2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator.

History: En. Sec. 13, Ch. 455, L. 1979; amd. Sec. 19, Ch. 575, L. 1981; amd. Sec. 1, Ch. 486, L. 1993.

7-1-4138. Public servants. All municipal officers and employees are public servants for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

History: En. Sec. 14, Ch. 455, L. 1979.

7-1-4139. Waiver of mail notice or protest. (1) If all persons entitled to mail notice waive in writing the mail notice requirement, the governing body may proceed without the required mail notice.

(2) If all persons entitled to protest an action waive in writing their right to protest, the governing body may proceed without publishing notice or meeting other requirements designed to permit protests to be filed.

(3) A waiver is sufficient if it is in writing, signed, and contains the following:

(a) a description of the mailed notice or protest right waived;

(b) a statement of the protestor's qualifications to waive the mailed notice or protest right;

(c) the address of the person;

(d) a statement that the waiver of notice is voluntarily and knowingly given, with knowledge of the signer's constitutional rights to notice.

(4) Waivers shall be submitted as provided by law and ordinance. The person receiving waivers for a local government shall note on each waiver the date it was received.

(5) A waiver which contains the required information may be signed by more than one person. A waiver signed by more than one person is a valid waiver by each signer.

(6) Signers are encouraged to print their names after their signatures.

History: En. Sec. 15, Ch. 455, L. 1979.

7-1-4140. Facsimile signature. Any officer or employee may use a facsimile signature or seal as provided in Title 2, chapter 16.

History: En. Sec. 16, Ch. 455, L. 1979.

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

History: En. Sec. 17, Ch. 455, L. 1979.

Cross-References

Constitutional right to observe governmental deliberations, Art. II, sec. 9, Mont. Const.

7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

History: En. Sec. 18, Ch. 455, L. 1979.

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

History: En. Sec. 19, Ch. 455, L. 1979.

7-1-4144. Public records. (1) Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

(3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.

History: En. Sec. 20, Ch. 455, L. 1979.

Cross-References

Constitutional right to examine documents, Art. II, sec. 9, Mont. Const.
Minutes of meetings — public inspection, 2-3-212.
State records — access, 2-6-102.
Criminal justice information — privacy protection requirements, Title 44, ch. 5.

7-1-4145. State reports. (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of administration shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of administration of the intended request.

History: En. Sec. 21, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 20, Ch. 483, L. 2001.

7-1-4146. Reports of departments, boards, and authorities. (1) All departments, boards, and authorities shall file an annual report with the chief executive, who shall compile the reports and present them to the governing body.

(2) The chief executive may specify the form, content, and deadline for filing reports.

History: En. Sec. 22, Ch. 455, L. 1979.

7-1-4147. State technical advice and assistance. (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services may not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of administration shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities.

History: En. Sec. 27, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 21, Ch. 483, L. 2001.

Cross-References

Intergovernmental cooperation, Art. XI, sec. 7, Mont. Const.

7-1-4148. Penalty. When a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of administration may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid that was stopped because of failure to provide the information must be paid to the municipality.

History: En. Sec. 28, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 22, Ch. 483, L. 2001.

7-1-4149. Applicability. (1) Except as provided in subsection (2), a provision of 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4148 applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4148 and make them applicable to all proceedings before the body.

History: En. Sec. 29, Ch. 455, L. 1979; amd. Sec. 4, Ch. 354, L. 2001.

7-1-4150. Municipal infractions — civil offense. (1) A municipal infraction is a civil offense punishable by a civil penalty of not more than $300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed $500 for each repeat violation.

(2) A municipality may by ordinance provide that a violation of an ordinance is a municipal infraction.

(3) (a) A municipality may by ordinance provide that a criminal offense under state law that is punishable only by a fine is a municipal infraction.

(b) Statutory surcharges must be imposed, as provided in 3-1-317(1)(a), 3-1-318(1), and 46-18-236(6)(a), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.

(c) A person may not be proceeded against for the same act or omission to act under both a municipal infraction ordinance and the corresponding state law criminal offense on which the municipal infraction ordinance is based.

(4) An officer who is authorized by a municipality to enforce a municipal code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service, by certified mail addressed to the defendant at the defendant's last-known mailing address, return receipt requested, or by publication, as provided in Rule 4D(5), M.R.Civ.P. A copy of the citation must be retained by the issuing officer and one copy must be sent to the clerk of the municipal or city court. The citation must serve as notification that a municipal infraction has been committed and must contain the following information:

(a) the name and address of the defendant;

(b) the name or description of the infraction attested to by the officer issuing the citation;

(c) the location and time of the infraction;
(d) the amount of civil penalty to be assessed or the alternate relief sought, or both;
(e) the manner, location, and time in which the penalty may be paid;
(f) the time and place of court appearance; and
(g) the penalty for failure to appear in court.

History: En. Sec. 2, Ch. 249, L. 1999; amd. Sec. 1, Ch. 398, L. 2005.

7-1-4151. Municipal infractions — proceedings. (1) In municipal infraction proceedings:

(a) the matter must be tried before a municipal court judge or city court judge in the same manner as a small claim if the total amount of civil penalties does not exceed $3,000. The matter may only be tried before a judge in district court if the total amount of civil penalties assessed exceeds $3,000.

(b) the city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.

(c) the court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant's behalf.

(d) the defendant may be represented by counsel of the defendant's own choosing and at the defendant's own expense;

(e) the defendant may answer by admitting or denying the infraction;

(f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. Each day that a violation occurs or is permitted to exist by the defendant constitutes a separate infraction.

(2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in the citation is served as provided in 7-1-4150 and fails without good cause to appear in response to the civil citation, judgment must be entered against the person.

(3) A person against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.

(4) Seeking a civil penalty as authorized in this section does not preclude a municipality from seeking alternative relief from the court in the same action.

(5) When judgment has been entered against a defendant, the court may do any of the following:

(a) impose a civil penalty by entry of a judgment against the defendant;

(b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;

(c) grant appropriate alternative relief ordering the defendant to abate or cease the violation;

(d) authorize the municipality to abate or correct the violation;

(e) order that the municipality's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred, or both.

(6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

History: En. Sec. 3, Ch. 249, L. 1999.

7-1-4152. Municipal infractions — jurisdiction — appeal. (1) A municipal court judge or city court judge has jurisdiction to assess or enter judgment for costs of abatement or correction in any amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to 3-11-103. If the municipality seeks abatement or correction costs in excess of that amount, the matter must be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appealed under 25-35-803.

(2) The defendant or the municipality may file a motion for a new trial or may appeal the decision to district court. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but is not admissible or binding as to any future violations for the same or similar ordinance provision by the same defendant.

(3) Except for willful or wanton misconduct on the part of the municipality, the issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

(4) An action brought pursuant to this section for a municipal infraction that is an environmental violation does not preclude, and is in addition to, any other enforcement action that may be brought under state law.

History: En. Sec. 4, Ch. 249, L. 1999.

CHAPTER 2
CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS

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7-2-101. Transcript of records upon alteration of boundary of local government.
7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government.
7-2-103. Collection of taxes upon alteration of boundary of local government.

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7-2-2103. Qualifications for municipality or village to be county seat.
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7-2-2241. Commission to determine and adjust indebtedness and assessments for old and new counties.
7-2-2242. Conduct of business by commission.
7-2-2243. Compensation of commission members.

7-2-2244. Role of commission.
7-2-2245. Commission to certify information to county commissioners.
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Part 23 — Organization of New Counties Created by Legislation (Repealed)

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Part 1

General Provisions Applicable to Local Government

Part Cross-References

County boundary change — vote required, Art. XI, sec. 2, Mont. Const.

7-2-101. Transcript of records upon alteration of boundary of local government. When a territory is detached from any county, city, or town in this state and annexed to any other county, city, or town:

(1) it is the duty of the proper officer of the county, city, or town to which the territory is annexed to demand from the proper officer of the county, city, or town having custody of the public records of the territory a transcript of all public records pertaining to the territory; and

(2) it is the duty of the officer from whom the records are demanded to furnish the authenticated transcripts of all records in that office, which must be paid for, after the records are furnished, by the county, city, or town to which the territory is annexed.

History: En. Sec. 1, Ch. 36, L. 1911; re-en. Sec. 4418, R.C.M. 1921; re-en. Sec. 4418, R.C.M. 1935; R.C.M. 1947, 16-611; amd. Sec. 264, Ch. 61, L. 2007.

7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town of this state and annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness and shall receive a just share of the credits from the county, city, or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached. The last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911; re-en. Sec. 4419, R.C.M. 1921; re-en. Sec. 4419, R.C.M. 1935; R.C.M. 1947, 16-612.

7-2-103. Collection of taxes upon alteration of boundary of local government. Subject to the provisions of part 27 of this chapter, if any territory is detached from any county, city, or town and is annexed to any other county, city, or town therein, it does not invalidate or interfere with the collection of taxes in such territory and the taxes shall be collected by and the returns made to the county to which the territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911; re-en. Sec. 4420, R.C.M. 1921; re-en. Sec. 4420, R.C.M. 1935; R.C.M. 1947, 16-613; amd. Sec. 2, Ch. 250, L. 1979.

Parts 2 through 20 reserved

Part 21

General Provisions Applicable to Counties

7-2-2101. Repealed. Sec. 21, Ch. 250, L. 1979.

History: En. Sec. 4156, Pol. C. 1895; re-en. Sec. 2850, Rev. C. 1907; re-en. Sec. 4304, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4304, R.C.M. 1935; R.C.M. 1947, 16-112.

7-2-2102. Apportionment of liabilities and assets upon creation or enlargement of county. (1) Every county which shall be enlarged or created from the territory taken from any other county or counties shall:

(a) be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken; and

(b) be entitled to a pro rata proportion of the assets of the county or counties from which such territory is taken.

(2) The share of liabilities and assets shall be determined as provided by 7-2-2204 and 7-2-2244 through 7-2-2246.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

Cross-References

County boundary change — vote required, Art. XI, sec. 2, Mont. Const.

7-2-2103. Qualifications for municipality or village to be county seat. No city, town, or village shall become the temporary or permanent county seat of any county organized under the provisions of part 22 or created by an act of the legislature unless such city or town shall have been incorporated in the manner provided by law or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder and there be fifty qualified electors residing within the boundaries of such platted village.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; R.C.M. 1947, 16-503(part).

Cross-References

Transfer of county seat — vote required, Art. XI, sec. 2, Mont. Const.

Organization and incorporation of new municipalities, Title 7, ch. 2, part 41.

7-2-2104. Transfer of certain records upon alteration of boundary of county. (1) In the event territory is taken from one county and added to another county, such plats and records covering such territory taken shall be transferred to the enlarged county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2105. Establishment of townships. The board of county commissioners must not set off or organize any new township unless a petition is presented to the board, signed by at least 50 citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895, Rev. C. 1907; re-en. Sec. 4468, R.C.M. 1921; re-en. Sec. 4468, R.C.M. 1935; R.C.M. 1947, 16-1102.

Part 22
Creation of New Counties by Petition

Part Cross-References

County boundary change — vote required, Art. XI, sec. 2, Mont. Const.

7-2-2201. Authorization to create new counties. (1) New counties may, from time to time, be formed and created in this state from portions of one or more counties which shall have been created and in existence for a period of more than 2 years, in the manner set forth and provided in this part.

(2) A county enlarged by the addition of territory taken from one or more other counties is a new county under the provisions of this part.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 1, Ch. 742, L. 1985.

7-2-2202. Limitations on creation of new counties. (1) No new county shall be established which shall reduce any county to an assessed valuation of less than $12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) No new county shall be formed which contains an assessed valuation of property less than $10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which such new county is to be established.

(3) No new county shall be established which shall reduce the area of any existing county from which territory is taken to form such new county to less than 500 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) No territory shall be taken from one county and added to another county unless its surveyed area is greater than 49 square miles.

(5) No new county shall be formed which contains less than 250 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 2, Ch. 742, L. 1985.

7-2-2203. Repealed. Sec. 19, Ch. 742, L. 1985.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 263, Ch. 571, L. 1979.

7-2-2204. Basis for determination of assessed valuation. For the purposes of this part, the assessed valuation of all property, whether included within the boundaries of a proposed new county or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in Montana.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R.C.M. 1921; re-en. Sec. 4391, R.C.M. 1935; amd. Sec. 34, Ch. 566, L. 1977; R.C.M. 1947, 16-502.

Cross-References

Property tax assessment, Title 15, ch. 8.

7-2-2205. Petition for creation of new county — number of signatures required. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of the then-existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.

(2) (a) If the proposed new county is to be formed from a portion of only one existing county, the petition must be signed by at least 50% of the registered electors of the proposed new county.

(b) If the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of the petitions shall be signed by at least 50% of the registered electors of the proposed portions.

(c) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a separate petition must be presented from each such territory, and each petition must be signed by at least 50% of the registered electors of the territory.

(3) For the purpose of determining the number of signatures needed on a petition to meet the percentage requirements of this section, the number of registered electors in a territory proposed to be included in a new county is the number of people registered to vote in that territory in the most recent general election.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 264, Ch. 571, L. 1979; amd. Sec. 3, Ch. 742, L. 1985; (3)En. Sec. 6(1), Ch. 742, L. 1985; 7-2-2205(2)(d) (formerly (2)(c)) redes. 7-2-2206(4) by Code Commissioner, 1985.

7-2-2206. Contents of petition — petition approval procedure — deadline for filing signatures. (1) A petition or petitions for creation of a new county must contain:

(a) a legal description of the territory proposed to be taken from the county in which the petition is circulated;

(b) a general map, on a separate page or pages, that with shaded areas or darkened boundary lines will display to prospective petition signers the general outlines of the territory described in subsection (1)(a);

(c) a statement of the assessed valuation of the proposed county as shown by the most recent assessment, inclusive of all assessed valuation;

(d) a statement of the surveyed area, in square miles, that will remain in the county or counties from which territory is taken to form the new county after the county is formed; a statement of the surveyed area in square miles that will be in the new county after formation; and a statement that the surveyed area of the territory proposed to be transferred is greater than 49 square miles;

(e) a warning that a person is subject to a $500 fine or 6 months in jail, or both, if the person purposefully:

(i) signs a name other than the person's own to the petition;

(ii) signs more than once for the same issue; or

(iii) signs when not a legally registered voter residing in the territory to be added to the proposed new county;

(f) if the proposed new county is to be formed from one existing county, or from portions of two or more existing counties, the name of the proposed new county and a request that the proposed new county be organized into a new county under the provisions of this part; and

(g) if the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a request that this territory be added to the proposed new county under the provisions of this part.

(2) Each person shall sign the person's name and address in substantially the same manner as on the person's voter registry card or the signature will not be counted.

(3) Numbered lines must be provided for signatures. Each numbered line must contain spaces for the signature, the printed last name of the signer, and the signer's address.

(4) The signatures are not required to all be appended to one paper but may be signed to several petitions, which must be similar in form. When signed, the several petitions may be fastened together and must be treated and presented as one petition.

(5) Before a petition may be circulated for signatures, a sample petition must be submitted to the county election administrator in the form in which it will be circulated for approval as to form. The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of this part. The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundaries. If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 21 days after submission of the sample send written notice to the person who submitted the petition. After that notice, the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(6) All petition signatures must be collected and filed within 120 days of the date of the notice that the petition has been approved as to form.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 4, Ch. 742, L. 1985; (4) redes. from 7-2-2205(2)(d) (formerly (2)(c)) by Code Commissioner, 1985; (5)En. Sec. 5, Ch. 742, L. 1985; (6)En. Sec. 6(2), Ch. 742, L. 1985; amd. Sec. 265, Ch. 61, L. 2007.

7-2-2207. Affidavits to be attached to petition — verification of signatures. (1) There must be attached and filed with each sheet or section of the petition or petitions an affidavit of the person who circulated the petition, stating that it is the person's belief that:

(a) it is signed by at least 50% of the qualified electors, as provided in this part, of the proposed new county or of the proposed portion of a proposed county taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(b) the signatures are genuine; and

(c) each person signing was, at the date of signing, a qualified elector of the proposed new county or of the portion of the proposed county taken from an existing county.

(2) The clerk of the county receiving the petition shall check the names of all signers to verify that they are registered electors of the proposed territory to be taken from the county. In addition, the county clerk shall randomly select signatures on each sheet or section of the petition and compare them with the signatures of the electors as they appear on the registration records of the office. If all of the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the registration records of the office.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 7, Ch. 742, L. 1985; (2)En. Sec. 8, Ch. 742, L. 1985; amd. Sec. 266, Ch. 61, L. 2007.

7-2-2208. Role of board of county commissioners — intercounty communication. (1) A board of county commissioners receiving a petition pursuant to 7-2-2205 shall be empowered and have jurisdiction to do and perform all acts provided for in this part for each of the several counties from which any proposed territory is to be taken and shall direct that a certified copy of all orders and proceedings had before such board shall be certified by the county clerk to the board of each of the several counties from which any territory is taken by the proposed new county.

(2) All officers of any such county shall comply with the orders of the board of county commissioners in the same manner as if said order had been duly made by the board of each respective county from which territory is proposed to be taken.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2209. Hearing and notice on petition. (1) Upon the filing of the petition and affidavit with the clerk of the board of county commissioners, the clerk shall fix a date to hear the petition and any opponents to the petition. The date must be not later than 30 days after the filing of the petition with the clerk of the board.

(2) The county clerk shall also publish a notice as provided in 7-1-2121 in the old counties and also within the boundaries of the proposed new county. The notice must be published in substantially the following form:

NOTICE

Notice is hereby given that a petition has been presented to the board of county commissioners of .... County (naming the county represented by the board of county commissioners with which the petition was filed), requesting the formation of a new county out of portions of .... County and .... County (naming the county or counties of which it is proposed to form the new county), and that the petition will be heard by the board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting), when and where all persons interested may appear and oppose the granting of the petition and make any objections to the petition.

Dated .... at ...., Montana

....., County Clerk

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 1, Ch. 220, L. 1985; amd. Sec. 5, Ch. 354, L. 2001.

7-2-2210. Repealed. Sec. 19, Ch. 742, L. 1985.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2211. Hearing on petition — protest. (1) At the time fixed for the hearing, the board of county commissioners shall hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn the hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in the petition.

(2) (a) No petition, protest, or petition for the exclusion of territory may be considered unless it is filed at least 1 day before the time fixed for the hearing.

(b) A petition for the exclusion of territory shall contain the names of not less than 50% of the registered electors of any territory to be excluded.

(c) All such territory being excluded must be in one block containing an area of not less than 36 square miles and be totally within one county and contiguous thereto.

(3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory may be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(3); amd. Sec. 3, Ch. 250, L. 1979; amd. Sec. 265, Ch. 571, L. 1979.

7-2-2212. Exclusions and additions of territory upon petition. (1) Except as provided in subsection (3), on final hearing, the board of commissioners, upon petition of not less than 50% of the registered electors (as shown by the official registration records on the day of the filing of the petition) of any territory lying within the proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within the single old county and described in the petition, asking that this territory not be included within the proposed new county, must make such changes in the proposed boundaries as will exclude the territory from the new county and shall establish and define the boundaries. Petitions for exclusion shall be disposed of in the order in which they are filed with the clerk of the board.

(2) Except as provided in subsection (3), on final hearing, the board, upon petition of not less than 50% of the registered electors of any territory lying outside the proposed new county and contiguous to the boundary line of the proposed new county and of the old county or counties from which such territory is proposed to be taken, asking that this territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in the new county and shall establish and define the boundaries.

(3) (a) The segregation of the territory from any old county or counties may not leave the county or counties with less than $12 million of assessed valuation, based upon the last assessment roll.

(b) No change or changes so made may result in reducing the valuation of the proposed new county to less than an assessed valuation of $10 million, inclusive of all assessed valuation.

(c) No change may be made which leaves the territory so excluded separate and apart from and without the county of which it was formerly a part.

(4) On final determination of boundaries, no changes in the boundaries originally proposed may be made except as prayed for in the petition or petitions or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(5); amd. Sec. 4, Ch. 250, L. 1979; amd. Sec. 266, Ch. 571, L. 1979.

7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of the petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries determined by the board must be the boundaries of the proposed new county if it is created as provided in this part;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as required in this part or, in cases where separate petitions are presented from portions of two or more existing counties as required in this part, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties that is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county and affected existing counties meet the limitations contained in 7-2-2202;

(5) the class to which the proposed new county will belong after its creation and the name of the proposed new county as stated in the petition; and

(6) whether the area embraced within the proposed new county will be reasonably compact.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(4); amd. Sec. 267, Ch. 571, L. 1979; amd. Sec. 7, Ch. 16, L. 1991.

Cross-References

Classes of counties, 7-1-2111.

7-2-2214. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(1); amd. Sec. 268, Ch. 571, L. 1979.

7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after its determination of the truth of the allegations of the petition, the board of county commissioners shall order and give notice of an election to be held for the purpose of determining whether the territory proposed to be taken from the county is to be established and organized into a new or enlarged county, for the election of officers, and for the location of a county seat if the vote at the election is in favor of the establishment and organization of a new county formed from a portion of one existing county or from portions of two or more existing counties.

(2) The question of determining whether the proposed territory is taken from the county and added to the proposed new county must be included on the ballot for the next regular or primary election scheduled not less than 60 days after the date of the order and notice.

(3) All registered electors of the county are entitled to vote at the election. Registration and transfers of registration must be made and must close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

(4) If the proposed new county is an existing county to be enlarged by territory taken from the county in which the petition was filed, the board of county commissioners of the proposed new county shall hold an election in the manner described in subsections (1) through (3).

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 269, Ch. 571, L. 1979; amd. Sec. 9, Ch. 742, L. 1985; amd. Sec. 1, Ch. 387, L. 1995.

Cross-References

Registration of electors, Title 13, ch. 2, part 2.
Transfer of registration, Title 13, ch. 2, part 5.

7-2-2216. Establishment of election precincts. The board of county commissioners of the county in which the petition was filed shall also, if necessary for the purpose of the election provided for in 7-2-2215(1), change the boundaries of the election precincts in the old county to make the same conform to the boundaries of the proposed new county, provided that the boundary lines of no such precinct shall extend beyond the boundary lines of the then-existing county in which it is located and from which the territory is proposed to be taken.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 10, Ch. 742, L. 1985.

Cross-References

Election precincts, Title 13, ch. 3.

7-2-2217. Appointment of election officials. The board of county commissioners of the county concerned shall appoint election judges to act at the election provided for in 7-2-2215(1) or 7-2-2215(4) and to be paid by the board.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 270, Ch. 571, L. 1979; amd. Sec. 11, Ch. 742, L. 1985.

Cross-References

Election judges, Title 13, ch. 4.

7-2-2218. Form of ballot. (1) If the proposed new county is to be formed from one county or from portions of two or more existing counties, the ballot must be in the following form:

(a) notice required by 7-2-2215 must require the electors to cast ballots that contain the words “For the new county of.... (giving the name of the proposed new county) — Yes” and “For the new county of.... (giving the name of the proposed new county) — No”.

(b) The ballots must also contain the names of individuals to be voted for to fill the various elective offices designated in the notice for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as provided in this part.

(c) There must also be printed upon the ballot the words “For the county seat” and the names of all cities or towns that may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate the elector’s choice for county seat by marking a cross (X) opposite the name of the city or town for which the elector desires to cast a vote.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the notice required by 7-2-2215(1) must require the electors to cast ballots that must contain the legal description of the territory to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words “For the territory described (or commonly known as....) to be detached from.... County and added to.... County — Yes” and “For the territory described (or commonly known as....) to be detached from.... County and added to.... County — No”.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 271, Ch. 571, L. 1979; amd. Sec. 12, Ch. 742, L. 1985; amd. Sec. 30, Ch. 42, L. 1997.

7-2-2219. Conduct of election. (1) (a) The board issuing the notice of election pursuant to 7-2-2215 shall require the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election that are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county that are within their respective counties.

(2) The elections provided for in 7-2-2215 are governed and controlled by the general election laws of the state to the extent that the general election laws are applicable and except as otherwise provided in this section. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to

primary elections in this state, apply to any election provided for in this part. All returns of an election must be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to be filled at the election must be made in the manner provided by law for the nomination of candidates by petition.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 5, Ch. 250, L. 1979; amd. Sec. 272, Ch. 571, L. 1979; amd. Sec. 13, Ch. 742, L. 1985; amd. Sec. 31, Ch. 42, L. 1997.

Cross-References

Elections, Title 13.

7-2-2220. Cost of election. The expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof as provided in 7-2-2244.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2221. Determination of county seat — temporary county seat. (1) If the proposed new county is to be formed from one county or from portions of two or more existing counties, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county at the election provided for in 7-2-2215(1), and the majority of all the votes cast therefor shall determine the election thereon.

(2) (a) In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat. The temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

(b) In case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter.

(c) When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(3) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the question of the election of the county seat may not be submitted to the electors at the election provided for in 7-2-2215.

History: Ap. p. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; Sec. 16-505, R.C.M. 1947; Ap. p. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; Sec. 16-503, R.C.M. 1947; R.C.M. 1947, 16-503(part), 16-505(part); amd. Sec. 14, Ch. 742, L. 1985.

Cross-References

Removal of county seat, Title 7, ch. 2, part 26.

7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast by those voting in an election under 7-2-2215(1) in the county, by those voting in the same election in the territory proposed to be taken from the county, and by those voting in an election held under 7-2-2215(4) are affirmative, the board of county commissioners shall, by a resolution entered upon its minutes, declare the new or enlarged county duly formed and created as a county of this state, of the class to which the same belongs and under the name of .... County, and, if appropriate, that the city or town receiving the highest number of votes cast at the election for county seat shall be the county seat of the county until removed in the manner provided by law and designate and declare the individuals receiving, respectively, the highest number of votes for the several offices to be filled at the election to be duly elected to the offices.

(2) However, if upon such canvass it appears that more than 50% of the votes cast on the issue by those voting in the county, or by those voting in the territory proposed to be taken from the county, or by those voting in an election held under 7-2-2215(4) are negative, the board canvassing the vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease. No other proceedings in relation to any other division of the old county or counties shall be instituted for at least 4 years after such determination.

History: **En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 273, Ch. 571, L. 1979; amd. Sec. 15, Ch. 742, L. 1985.**

Cross-References

Removal of county seat, Title 7, ch. 2, part 26.
Election canvass, Title 13, ch. 15.

7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and certified, together with a legal description of the new boundaries of each affected county, in the office of the secretary of state. Ninety days after the date of filing:

(a) the new county is considered to be fully created;

(b) the organization of the new county is considered completed; and

(c) any new county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed shall immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by the administrator's signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices.

History: **En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 6, Ch. 250, L. 1979; amd. Sec. 274, Ch. 571, L. 1979; amd. Sec. 16, Ch. 742, L. 1985; amd. Sec. 267, Ch. 61, L. 2007.**

Cross-References

County officers — generally, Title 7, ch. 4, part 22.

7-2-2224. Offices and supplies for new county. If the new county has a new county seat under 7-2-2221, the board of county commissioners of the new county may provide a suitable place for the county officers and purchase supplies necessary for the proper conduct of the county government.

History: **En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 7, Ch. 250, L. 1979; amd. Sec. 17, Ch. 742, L. 1985.**

7-2-2225. Officers of new county. (1) Except as provided in subsections (2) through (4), at the election provided for in 7-2-2215, there must be chosen a board of county commissioners and other county and district officers as are provided by law for counties of the class to which the new county belongs.

(2) All elected, qualified, and acting officers of the county or counties who reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it is to call the election. Filing with the board is the officers' declaration of intent to become officers of the proposed new county. The board issuing the proclamation of the election shall omit providing for the election of any officers who have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of the county into school districts, as provided in Title 20, chapter 6, shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized.

(5) The officers elected or appointed under the provisions of this part shall perform the duties and receive the compensation provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs.

History: **En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part); amd. Sec. 8, Ch. 250, L. 1979; amd. Sec. 8, Ch. 16, L. 1991.**

Cross-References

County officers — qualifications, duties, and compensation, Title 7, ch. 4.

7-2-2226. Term of office for initial officers of new county. All the officers elected at said election or appointed under this part shall hold their offices until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified. For the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed from and including the first Monday after January 1 following the preceding general election.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part).

Cross-References

General election dates, 13-1-104.

7-2-2227. Qualification, oath of office, and bond. (1) Each person elected or appointed to fill an office of a new county under the provisions of this part shall qualify in the manner provided by law for that officer, except as otherwise provided in this part, and shall enter upon the discharge of the duties of the office within the time provided in this part after the receipt of the certificate of election.

(2) Each of the officers may take the oath of office before any officer authorized by the laws of Montana to administer oaths.

(3) The bond of any officer from which a bond is required must be approved by a judge of the district court of the district to which the new county is attached for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part); amd. Sec. 268, Ch. 61, L. 2007.

Cross-References

County officers — generally — qualifications, Title 7, ch. 4.
Filing oath of office, 7-4-101.
Official bonds of county officers, 7-4-2212.

7-2-2228. Judicial district for new county. A new county, when created and organized pursuant to this part, must be attached to the judicial district designated by the governor in a proclamation designating the new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part); amd. Sec. 269, Ch. 61, L. 2007.

Cross-References

Judicial districts defined, 3-5-101.

7-2-2229 through 7-2-2240 reserved.

7-2-2241. Commission to determine and adjust indebtedness and assessments for old and new counties. (1) It shall be the duty of the persons elected to or continuing to hold the office of county commissioner of said new county to meet at the county seat thereof within 5 days after all of them shall have qualified, and upon organization of said board of county commissioners, it shall notify the governor of the state of the organization of said county. Thereupon, it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county and no two of whom shall be from any one county, to form and be a board of commissioners.

(2) The proceedings required in 7-2-2244 through 7-2-2246 to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county in the manner and at the ratio provided in 7-2-2244 through 7-2-2246.

History: (1)En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; Sec. 16-510, R.C.M. 1947; (2)En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; Sec. 16-511, R.C.M. 1947; R.C.M. 1947, 16-510(part), 16-511(part).

7-2-2242. Conduct of business by commission. (1) The commissioners provided for in 7-2-2241 shall, within 10 days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a presiding officer and also by electing a secretary, who may not be a member of the commission. Thereafter, the commission may meet at a place that it may select. A majority of the commissioners constitutes a quorum for the transaction of business.

(2) (a) The commission may compel by citation or subpoena, signed by its presiding officer and secretary, the attendance of persons and the production of books and papers before the commission that may be required in the performance of the duties imposed by this part, except that the official records of any county or counties from which the new county was formed may not be taken away from the county seat of the original county.

(b) It is the duty of the sheriff of any county to execute in that county all lawful orders and citations of the commission, and for the services performed, the sheriff is allowed the same fees that are allowed for services in civil actions.

(c) All witnesses attending before the commission are entitled to the same compensation and mileage that is allowed to witnesses in courts of record. A witness may not be excused from attendance at the time and place mentioned in the order or citation by reason of the failure of the officer making the service to tender to the witness fees and mileage in advance.

History: En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; R.C.M. 1947, 16-510(part); amd. Sec. 270, Ch. 61, L. 2007.

Cross-References

Sheriff's fees for civil actions, 7-32-2141.
Subpoenas, Title 26, ch. 2, part 1.
Compensation and mileage for witnesses, Title 26, ch. 2, part 5.

7-2-2243. Compensation of commission members. Members of the board of commissioners provided for under 7-2-2241 shall receive a compensation of not to exceed $25 per day for every day they are actually employed under the provisions of this part. All of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county. The amounts payable by each county shall be paid by the treasurers of the respective counties after the same shall have been presented to and allowed by the board of county commissioners as is provided by law for claims against any county.

History: En. Sec. 8, Ch. 226, L. 1919; re-en. Sec. 4399, R.C.M. 1921; re-en. Sec. 4399, R.C.M. 1935; R.C.M. 1947, 16-512; amd. Sec. 18, Ch. 742, L. 1985.

7-2-2244. Role of commission. (1) (a) Said board of commissioners shall, immediately after its organization:

(i) ascertain the costs of the election held hereunder and apportion the same pro rata among each of the counties from which territory was taken to form such new county;

(ii) ascertain the indebtedness of each county from which territory was taken to form the new county as the same existed at the time when the result of the election was declared by the board of county commissioners as hereinbefore provided;

(iii) ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively; and

(iv) ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last-completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed.

(b) In the determination of the value of county property, all buildings and their furniture, real estate, road tools, machinery, and all steel bridges which may have been constructed and in use for a period less than 10 years shall be taken into consideration by the commissioners.

(2) They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows: as said assessed value of the property in the old county is to the assessed value of the property in the territory to be incorporated by this part within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2245. Commission to certify information to county commissioners. Said board of commissioners shall certify forthwith to the board of county commissioners of the new county and the old counties thereby affected the amount constituting the due proportion of said excess payable by such new county to each of them and also the value of any property belonging to each old county at the time when said division took effect, as hereinbefore provided, which is situated in the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2246. Settlement between counties following adjustment of indebtedness. (1) The sum of said ascertained value of the property referred to in 7-2-2245 added to the ascertained proportion of the excess referred to in 7-2-2245 which the new county is to pay the old county and its proportion of the expense of said election, as aforesaid, shall be an indebtedness from the new county to the old county, and the property situated, as aforesaid, in the new county shall upon settlement therefor as provided in this part, become the property of the new county, and the old county shall pay the entire indebtedness against it.

(2) If, upon the settlement between the old and the new counties, as herein provided for, the new county shall be found to be indebted to the old county or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county and said new county shall pay the same. Such payment by said new county may be made in not more than three equal annual payments or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county adopted within 1 year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it.

(3) If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county when the indebtedness of the old county exceeds the value of the property in the old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2247 through 7-2-2250 reserved.

7-2-2251. Collection of delinquent taxes. Delinquent taxes due the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

Cross-References

Collection of property taxes, Title 15, ch. 16.

7-2-2252. Assessment and collection of taxes for new county. (1) After the creation of a new county, its officers shall complete all proceedings necessary for the assessment or collection of the state and county taxes for the then-current year.

(2) (a) All acts and steps taken by the officers of the old county or counties prior to the creation of the new county are considered as having been performed by the officers of the new county for the benefit of the new county. Upon the creation of the new county, it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of the new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes on property in the new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county. Such certified copies are considered as originals in the new county, and all proceedings therein recited are considered as original proceedings in the new county and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county.

(b) The officials of the new county shall proceed with the assessment and collection of the taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: **En. Sec. 9, Ch. 226, L. 1919; re-en. Sec. 4400, R.C.M. 1921; re-en. Sec. 4400, R.C.M. 1935; R.C.M. 1947, 16-513; amd. Sec. 9, Ch. 250, L. 1979.**

7-2-2253. Procedure to transfer money to school and road funds. (1) The county superintendent of schools of an old county shall furnish the county superintendent of schools of the new county with a certification of the average number belonging (ANB) in the different school districts in the territory set apart to form the new county and shall certify to the board of county commissioners of the old county the amount due. The board of the old county shall order a warrant drawn on the treasury of the old county for all the money that is or may be due by apportionment or otherwise to the different school districts embraced in the new county and taken from the old county.

(2) The county treasurer shall certify to the county commissioners of an old county the amount due in the different road funds. The county commissioners shall order a warrant drawn on the treasury of the old county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county and taken from the old county, which amounts shall be properly credited in both counties.

(3) Whenever in the formation of a new county a road or school district has been divided, the board of county commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: **En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R.C.M. 1921; re-en. Sec. 4401, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1973; R.C.M. 1947, 16-514; amd. Sec. 10, Ch. 250, L. 1979.**

7-2-2254. Transfer and transcription of records. (1) The board of county commissioners of any new county must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property situated in the new county or the title thereof.

(2) All chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situated within the new county shall be delivered by the county clerk of the old county to the county clerk of the new county and shall be preserved by the county clerk of the new county as permanent files of the new county.

History: **En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; R.C.M. 1947, 16-515(part); amd. Sec. 11, Ch. 250, L. 1979.**

7-2-2255. Transfer of court files and actions. (1) The files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county must be delivered by the clerk of the district court of the old county to the clerk of the district court of the new county to be kept and preserved as permanent files of the new county so that only the minutes and other entries in books kept by the clerk of the district court need to be transcribed.

(2) All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county must, upon the delivery of the files to the clerk of the district court of the new county as provided in subsection (1), be transferred to the district court in which the new county may be attached for judicial purposes and are subject to the same laws as if the action had been originally brought in the district court of the new county.

History: **(1)En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; Sec. 16-515, R.C.M. 1947; (2)En. Sec. 12, Ch. 226, L. 1919; re-en. Sec. 4403, R.C.M. 1921; amd. Sec. 2, Ch. 75, L. 1925; re-en. Sec. 4403, R.C.M. 1935; Sec. 16-516, R.C.M. 1947; R.C.M. 1947, 16-515(part), 16-516; amd. Sec. 271, Ch. 61, L. 2007.**

7-2-2256. Repealed. Sec. 70, Ch. 354, L. 2001.

History: **En. Sec. 13, Ch. 226, L. 1919; re-en. Sec. 4404, R.C.M. 1921; re-en. Sec. 4404, R.C.M. 1935; R.C.M. 1947, 16-517.**

Part 23
Organization of New Counties Created by Legislation
(Repealed)

7-2-2301. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part).

7-2-2302. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part); amd. Sec. 275, Ch. 571, L. 1979.

7-2-2303. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 11, Ch. 135, L. 1911; re-en. Sec. 4388, R.C.M. 1921; re-en. Sec. 4388, R.C.M. 1935; R.C.M. 1947, 16-411.

7-2-2304 through 7-2-2310 reserved.

7-2-2311. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(1), (2).

7-2-2312. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(3) thru (5); amd. Sec. 276, Ch. 571, L. 1979.

7-2-2313. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 3, Ch. 135, L. 1911; re-en. Sec. 4380, R.C.M. 1921; re-en. Sec. 4380, R.C.M. 1935; R.C.M. 1947, 16-403; amd. Sec. 277, Ch. 571, L. 1979; amd. Sec. 2, Ch. 250, L. 1985.

7-2-2314. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 4, Ch. 135, L. 1911; re-en. Sec. 4381, R.C.M. 1921; re-en. Sec. 4381, R.C.M. 1935; R.C.M. 1947, 16-404; amd. Sec. 278, Ch. 571, L. 1979.

7-2-2315. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Secs. 6, 7, Ch. 135, L. 1911; re-en. Secs. 4383, 4384, R.C.M. 1921; re-en. Secs. 4383, 4384, R.C.M. 1935; R.C.M. 1947, 16-406, 16-407(part); amd. Sec. 279, Ch. 471, L. 1979.

7-2-2316. Repealed. Sec. 98, Ch. 51, L. 1999.

History: (1) thru (3)En. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; (4)En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; Sec. 16-409, R.C.M. 1947; R.C.M. 1947, 16-408(part), 16-409(part); amd. Sec. 379, Ch. 571, L. 1979.

7-2-2317. Repealed. Sec. 98, Ch. 51, L. 1999.

History: Ap. p. Sec. 7, Ch. 135, L. 1911; re-en. Sec. 4384, R.C.M. 1921; re-en. Sec. 4384, R.C.M. 1935; Sec. 16-407, R.C.M. 1947; Ap. p. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; R.C.M. 1947, 16-407(part), 16-408(part).

7-2-2318. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; R.C.M. 1947, 16-409(part).

7-2-2319. Repealed. Sec. 98, Ch. 51, L. 1999.

History: En. Sec. 10, Ch. 135, L. 1911; re-en. Sec. 4387, R.C.M. 1921; re-en. Sec. 4387, R.C.M. 1935; R.C.M. 1947, 16-410.

Part 24
Transfer and Transcription of Records, Court Actions, and Jury Lists for New Counties

7-2-2401. Transfer of certain records. (1) Any new county shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county. Such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said new county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2402. Transcription of records. (1) Any county or counties of Montana that shall be formed from portions of another county shall be entitled to have the county records affecting or relating to any and all property situated in the segregated county transcribed from the books of the original county and made a part of the records of the segregated county.

(2) Except as provided in 7-2-2401, it shall be the duty of the county commissioners of any county formed from part of another county to have so much of the records of the original county as relates to the property situated within the segregated county transcribed, as hereinafter provided.

History: (1)En. Sec. 1, p. 217, L. 1893; re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. 2860, Rev. C. 1907; re-en. Sec. 4408, R.C.M. 1921; re-en. Sec. 4408, R.C.M. 1935; Sec. 16-601, R.C.M. 1947; (2)En. Sec. 2, p. 217, L. 1893; re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. 2861, Rev. C. 1907; re-en. Sec. 4409, R.C.M. 1921; re-en. Sec. 4409, R.C.M. 1935; Sec. 16-602, R.C.M. 1947; R.C.M. 1947, 16-601, 16-602.

7-2-2403. Authority to contract for transcription service. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situated within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. 2862, Rev. C. 1907; re-en. Sec. 4410, R.C.M. 1921; re-en. Sec. 4410, R.C.M. 1935; R.C.M. 1947, 16-603.

7-2-2404. Payment for transcription of records. Payment for transcribing such records shall be made by the county contracting therefor and by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. 2863, Rev. C. 1907; re-en. Sec. 4411, R.C.M. 1921; re-en. Sec. 4411, R.C.M. 1935; R.C.M. 1947, 16-604.

7-2-2405. Certification of accuracy of transcription. (1) When the transcript of the records provided for in this part are completed and approved by the county commissioners of the county, they must be delivered to the county clerk and recorder of the county from which the records were taken. It is the duty of the county clerk and recorder to compare the records transcribed with the original records as the records appear on the record books of the original county. The county clerk and recorder to whom the transcript is delivered for comparison shall certify under oath that the transcribed records are full, complete, and exact copies of the original records.

(2) The county clerk and recorder is entitled to $6 a day for the time actually spent in comparing the records, to be paid out of the general fund of the county requiring the comparison and certificate.

History: En. Sec. 5, p. 218, L. 1893; re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. 2864, Rev. C. 1907; re-en. Sec. 4412, R.C.M. 1921; re-en. Sec. 4412, R.C.M. 1935; R.C.M. 1947, 16-605; amd. Sec. 272, Ch. 61, L. 2007.

7-2-2406. Filing of transcribed records. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: En. Sec. 6, p. 218, L. 1893; re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. 2865, Rev. C. 1907; re-en. Sec. 4413, R.C.M. 1921; re-en. Sec. 4413, R.C.M. 1935; R.C.M. 1947, 16-606.

7-2-2407. Legal effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence and shall have the same force and effect as certified copies of original records.

History: En. Sec. 7, p. 218, L. 1893; re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. 2866, Rev. C. 1907; re-en. Sec. 4414, R.C.M. 1921; re-en. Sec. 4414, R.C.M. 1935; R.C.M. 1947, 16-607.

7-2-2408 through 7-2-2410 reserved.

7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county wherever there has been an action or proceeding begun affecting any real property situated within the new county, whether the action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in the real property affected by the action or proceeding requesting the transfer of the files and papers and records of the action or proceeding to the office of the clerk of the district court of the new county in which the real property is situated, it is the duty of the judge of the district court in which the action or proceeding was originally begun to order that a transfer of all the files and papers of the action or proceeding be made to the office of the clerk of the district court of the new county in which the real property is situated. When an order of transfer is made, it is the duty of the clerk of the district court in which the action or proceeding was originally instituted to transmit all of the files and papers in the action or proceeding, together with a certified copy of all minutes of the court relating to the action or proceeding, to the clerk of the new county in which the real property, the subject matter of the action or proceeding, is situated.

(2) The clerk of the district court of the new county in which the property is situated shall, upon the receipt of the files and papers and certified copies of the minutes of the court, file the papers in the clerk's office as transferred files from the original county and shall enter and transcribe upon the clerk's records any final judgment or decree or order contained in the files or papers or records transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county in accordance with the provisions of this section, the district court of the new county in which the files and papers have been transferred has the same jurisdiction with reference to the real property for the enforcement of any decree, judgment, or order that may have been entered or for other proceedings that may be necessary in the action or proceeding as the district court had in the county in which the action or proceeding was originally begun.

History: (1), (2)En. Sec. 1, Ch. 20, L. 1907; re-en. Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, R.C.M. 1921; re-en. Sec. 4415, R.C.M. 1935; Sec. 16-608 R.C.M. 1947; (3)En. Sec. 2, Ch. 20, L. 1907; Sec. 2868, Rev. C. 1907; re-en. Sec. 4416, R.C.M. 1921; re-en. Sec. 4416, R.C.M. 1935; Sec. 16-609, R.C.M. 1947; R.C.M. 1947, 16-608, 16-609; amd. Sec. 273, Ch. 61, L. 2007.

7-2-2412. Fees for transfer of court records. (1) The clerk of the district court in which an action or proceeding was originally begun is entitled to receive, for transferring the files, papers, and certified copies of the minutes and records entered in connection with the action or proceeding, only a fee at the rate of 20 cents per folio for copies of minutes and 50 cents for a certificate fee.

(2) The clerk of the district court of the new county to which files and papers may be transferred in accordance with the provisions of 7-2-2411 is not entitled to any fees for the filing of the transferred records, but for the filing of any papers that may be filed after the transfer in connection with an action or proceeding or for the issuance of any writs or other papers, the clerk is entitled to charge the same fees as provided by law.

History: En. Sec. 3, Ch. 20, L. 1907; Sec. 2869, Rev. C. 1907; re-en. Sec. 4417, R.C.M. 1921; re-en. Sec. 4417, R.C.M. 1935; R.C.M. 1947, 16-610; amd. Sec. 274, Ch. 61, L. 2007.

Cross-References

Fees of Clerk of District Court, 25-1-201.

7-2-2413 through 7-2-2420 reserved.

7-2-2421. Preparation of jury list for new county. Whenever a new county has been created out of territory formerly embraced in any existing county or counties of the state, the jury list for such new county for the current year and until the regular jury commission for such new county shall certify the new jury list for the succeeding year, in accordance with the provisions of Title 3, chapter 15, part 4 shall be as follows.

History: En. Sec. 1, Ch. 129, L. 1919; re-en. Sec. 4422, R.C.M. 1921; re-en. Sec. 4422, R.C.M. 1935; R.C.M. 1947, 16-622.

7-2-2422. Certification of list of names. (1) The clerk of the district court of the county from which a new county is segregated or, if a new county is segregated from two or more counties, the clerks of district court of each of the counties shall take the names of persons that appear upon the jury list for the year, which may have been certified to the clerk or clerks of district court by the jury commission or commissions of the respective county or counties to be residents of the territory embraced in the new county, and shall certify the names to the clerk of the district court of the new county.

(2) The names constitute the jury list for the new county for the year.

(3) The new list must be made and certified by the clerk or clerks of district court of the existing county or counties as soon after the creation of the new county as may be practicable and in any event within 5 days after a request for the list is made by the clerk of the district court of the new county.

History: (1), (2)En. Sec. 2, Ch. 129, L. 1919; re-en. Sec. 4423, R.C.M. 1921; re-en. Sec. 4423, R.C.M. 1935; Sec. 16-623, R.C.M. 1947; (3)En. Sec. 3, Ch. 129, L. 1919; re-en. Sec. 4424, R.C.M. 1921; re-en. Sec. 4424, R.C.M. 1935; Sec. 16-624, R.C.M. 1947; R.C.M. 1947, 16-623, 16-624; amd. Sec. 9, Ch. 130, L. 2005.

7-2-2423. Correction of jury lists for old counties. The clerk or clerks of the district court of the county or counties from which the new county has been created shall, after the creation of the new county, remove from the list of jurors and jury boxes of the clerk's county or counties the names of all persons upon the list that may have been filed with the clerk by the jury commission who may appear to the clerk to be residents of the new county and certified by the clerk as provided in 7-2-2422.

History: En. Sec. 4, Ch. 129, L. 1919; re-en. Sec. 4425, R.C.M. 1921; re-en. Sec. 4425, R.C.M. 1935; R.C.M. 1947, 16-625; amd. Sec. 275, Ch. 61, L. 2007.

7-2-2424. Role of clerk of district court in new county. The clerk of the district court of the new county shall file and prepare the jury list and boxes in accordance with the general law pertaining to the duties of clerks of district court with relation to jury lists and boxes.

History: En. Sec. 5, Ch. 129, L. 1919; re-en. Sec. 4426, R.C.M. 1921; re-en. Sec. 4426, R.C.M. 1935; R.C.M. 1947, 16-626; amd. Sec. 10, Ch. 130, L. 2005.

Part 25
Change of Name of County

Part Cross-References

Name of county, 7-1-2102.

7-2-2501. Authorization to change name of county. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title as provided in this part.

History: En. Sec. 1, Ch. 113, L. 1917; re-en. Sec. 4427, R.C.M. 1921; re-en. Sec. 4427, R.C.M. 1935; R.C.M. 1947, 16-701.

7-2-2502. Petition to change county name. (1) Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

(2) A petition for the change of the name of any county in this state must be signed by a number of the legal voters who are taxpayers in the county equal, at least, to 25% of the whole number of votes cast for the office of governor of Montana in the county at the gubernatorial election preceding the circulation of the petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching the voter's name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for the change of name and must be entitled in and addressed to the appropriate district court.

History: (1)En. Sec. 2, Ch. 113, L. 1917; re-en. Sec. 4428, R.C.M. 1921; re-en. Sec. 4428, R.C.M. 1935; Sec. 16-702, R.C.M. 1947; (2)En. Sec. 3, Ch. 113, L. 1917; re-en. Sec. 4429, R.C.M. 1921; re-en. Sec. 4429, R.C.M. 1935; Sec. 16-703, R.C.M. 1947; R.C.M. 1947, 16-702, 16-703; amd. Sec. 276, Ch. 61, L. 2007.

7-2-2503. Form of petition. (1) The form of petition for any change of name of a county, as provided in this part, must be substantially as follows:

In the district court of the .... judicial district of the state of Montana, in and for the county of .....

Petition for the change of the
name of .... County

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of ....

We, the undersigned legal voters of the county of ...., state of Montana, respectfully petition the honorable district court that the name of .... County, Montana, be changed to the name of .... County, Montana.

The reasons for the proposed change of name are as follows (here set out reasons):

We further petition this honorable court to appoint a time for the hearing of this petition and of objections to this petition that may be filed before that date.

Each voter whose signature is affixed certifies that the voter has personally signed this petition and that the residence, post-office address, and voting precinct of the signer are correctly written after the signature.

Name	Residence	P.O. Address	Voting Precinct
....	....	....	....

Numbered lines for names.

(2) Each sheet for petitioners' signatures must be attached to a full and correct copy of the petition, and the petition may be filed with the clerk of the district court in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917; re-en. Sec. 4430, R.C.M. 1921; re-en. Sec. 4430, R.C.M. 1935; R.C.M. 1947, 16-704; amd. Sec. 277, Ch. 61, L. 2007.

7-2-2504. Verification of petition signatures — county clerk's certification. (1) The county clerk of the county in which the petition provided for in 7-2-2503 must be signed shall compare the signatures of the voters signing the petition with their signatures on the registration books and blanks on file in the clerk's office for the preceding general election. The county clerk may not retain a petition or any part of a petition for a longer period than 2 days for the first 200 signatures and 1 additional day for each 200 additional signatures or fraction of that number on the sheets presented to the clerk. At the expiration of that time, the clerk shall file the petition with the clerk of the district court, with the county clerk's certificate attached to the petition as provided in subsection (2).

(2) After comparing the signatures, the county clerk shall attach to the sheets of the petition containing the signatures a certificate to the district court, substantially as follows:

State of Montana, County of ....

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

I, ..., county clerk of the county of ...., certify that I have compared the signatures on (number of sheets) of the petition for change of name attached with the signatures of voters as they appear on the registration books and blanks in my office. I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. I further certify that the number of genuine signatures attached equals at least 25% of the whole number of votes cast for the office of governor of Montana in the county at the gubernatorial election preceding the circulation of this petition.

...., County Clerk
(Seal) By ....
Deputy ....

(3) The forms in this section are not mandatory, and if substantially followed in any petition, it is sufficient, disregarding clerical and merely technical errors.

History: En. Sec. 5, Ch. 113, L. 1917; re-en. Sec. 4431, R.C.M. 1921; re-en. Sec. 4431, R.C.M. 1935; R.C.M. 1947, 16-705; amd. Sec. 278, Ch. 61, L. 2007.

7-2-2505. Publication of copies of petition. Upon the filing of the petition, the clerk of the district court, upon the receipt of the cost from any voter in the county, shall publish a copy of the petition as provided in 7-1-2121. Proofs must be made of the publication before the petition can be considered and before a date for the hearing on the petition may be fixed by the court.

History: En. Sec. 6, Ch. 113, L. 1917; re-en. Sec. 4432, R.C.M. 1921; re-en. Sec. 4432, R.C.M. 1935; R.C.M. 1947, 16-706; amd. Sec. 6, Ch. 354, L. 2001.

7-2-2506. Court hearing on petition — court order. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of 7-2-2505. Objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition and may make an order changing the name if there appears any reason, benefit, or advantage for such change or may dismiss the petition as to the court or judge may seem right or proper.

History: En. Sec. 7, Ch. 113, L. 1917; re-en. Sec. 4433, R.C.M. 1921; re-en. Sec. 4433, R.C.M. 1935; R.C.M. 1947, 16-707.

7-2-2507. Transmittal to secretary of state of order to change name. (1) Immediately upon the rendition of any decree changing the name of a county as provided in this part, the clerk of the district court of said county shall transmit, by registered or certified mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of Montana.

(2) The secretary of state shall file the same and record the same in an appropriate book.

History: En. Sec. 8, Ch. 113, L. 1917; re-en. Sec. 4434, R.C.M. 1921; re-en. Sec. 4434, R.C.M. 1935; R.C.M. 1947, 16-708.

7-2-2508. Procedure to effectuate name change in records and other papers. (1) From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree. All printed blanks and forms, all printed matter whatsoever, and all written records of such county shall be styled and designated with the new name. All the official records, blanks, forms, books, and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as provided in the decree.

(2) For the convenience of searchers of public records and in order to prevent confusion with respect to land titles or in any other respect, it shall be proper to style, designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name (Formerly) Old Name of County

……………………………………………………………………………………

History: En. Sec. 9, Ch. 113, L. 1917; re-en. Sec. 4435, R.C.M. 1921; re-en. Sec. 4435, R.C.M. 1935; R.C.M. 1947, 16-709.

7-2-2509. Effect of name change on property and legal rights. (1) All public records and property of the county existing under the former name shall be and become the public records and property of the county of the new name. In all conveyances, indentures, instruments, decrees of courts, and other records where the former name of the county occurs, said former name shall thereafter be construed to mean the new name of the county.

(2) All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name. All bonds, undertakings, and sureties, alive and in existence and running to or standing in the former name of the county, shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name or in any of the other courts of said county shall continue in full force and be in existence in the court in which they were pending under the new name of the county and shall not be in anywise abated or affected by the change of name.

History: En. Sec. 10, Ch. 113, L. 1917; re-en. Sec. 4436, R.C.M. 1921; re-en. Sec. 4436, R.C.M. 1935; R.C.M. 1947, 16-710.

7-2-2510. Effect of name change on vested rights and existing laws. (1) The change of name provided for in this part shall not impair or work a forfeiture or alteration of any vested rights.

(2) All laws of a general or special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917; re-en. Sec. 4437, R.C.M. 1921; re-en. Sec. 4437, R.C.M. 1935; R.C.M. 1947, 16-711.

Cross-References

No law impairing obligation of contracts, Art. II, sec. 31, Mont. Const.
No retrospective laws, Art. XIII, sec. 1, Mont. Const.

7-2-2511. Effect of name change on indebtedness, obligations, and contracts. (1) All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name. All bonds issued by the county under its former name, outstanding and unpaid at the time of the rendition of the decree, shall be assumed by and become due from and paid by the county under its new name.

(2) All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree shall be assumed and discharged by the county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917; re-en. Sec. 4438, R.C.M. 1921; re-en. Sec. 4438, R.C.M. 1935; R.C.M. 1947, 16-712; amd. Sec. 12, Ch. 250, L. 1979.

7-2-2512. Effect of name change on district court. The terms of the district court in and for said county, as theretofore established by the court or a judge thereof under the former name of the county, shall become the terms of said court for the county under its new name and shall be held as stated, in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917; re-en. Sec. 4439, R.C.M. 1921; re-en. Sec. 4439, R.C.M. 1935; R.C.M. 1947, 16-713.

7-2-2513. Effect of name change on officers. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials and members of the legislature of the county under its former name shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name and, as such, shall be entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).

7-2-2514. Effect of name change on county boundaries. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).

Part 26
Removal of County Seat

Part Cross-References

Constitutional requirement for vote on transfer of county seat, Art. XI, sec. 2, Mont. Const.
Qualifications for county seat, 7-2-2103.
Removal of county seat after enemy attack, 10-3-608.

7-2-2601. Petition to remove county seat. (1) Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law or otherwise to another place, they may present a petition to the board of county commissioners of their county, praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made.

(2) The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented at least 60 days prior to any action thereon being taken by the board of county commissioners. Action on said petition by the board must be had at a regular meeting of said board.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2602. Filing of petition — notice and hearing. (1) A petition for removal of a county seat must be filed with the county clerk.

(2) The county clerk, immediately upon the filing of the petition, shall publish a notice as provided in 7-1-2121. The notice must state that the petition is open to inspection in the office of the county clerk.

(3) Any other or additional petition than the one originally filed may not be considered by the board.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part); amd. Sec. 7, Ch. 354, L. 2001.

7-2-2603. Withdrawal of name from petition. At any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that the person desires to have the person's name withdrawn from the petition, provided that not more than one withdrawal may be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part); amd. Sec. 279, Ch. 61, L. 2007.

7-2-2604. Consideration of petition — submission to voters. (1) For the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county for the purpose of ascertaining whether such petition bears the names of at least 50% of the voters listed therein.

(2) If the petition is signed by at least 50% of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county.

(3) If such petition then shows that it has not been signed by at least 50% of the voters of the county, after deducting from the original petition the names of all persons who may have signed such original petition and who may have filed or caused to be filed with the county clerk of said county or the board, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R.C.M. 1921; Cal. Pol. C. Sec. 3977; re-en. Sec. 4370, R.C.M. 1935; amd. Sec. 1, Ch. 406, L. 1973; R.C.M. 1947, 16-302.

7-2-2605. Notice and conduct of election. (1) Notice of an election for removal of a county seat, clearly stating the object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law at a regular or primary election.

(2) In voting on the question, each elector must vote for the place in the county which the elector prefers by placing the mark X opposite the name of the place.

History: (1)En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907; re-en. Sec. 4371, R.C.M. 1921; Cal. Pol. C. Sec. 3979; re-en. Sec. 4371, R.C.M. 1935; Sec. 16-303, R.C.M. 1947; (2)En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907; re-en. Sec. 4372, R.C.M. 1921; Cal. Pol. C. Sec. 3980; re-en. Sec. 4372, R.C.M. 1935; Sec. 16-304, R.C.M. 1947; R.C.M. 1947, 16-303, 16-304; amd. Sec. 2, Ch. 387, L. 1995.

Cross-References

General provisions governing elections and canvasses, Title 13, ch. 12 through 17.

7-2-2606. Determination and publication of election results. (1) When the returns have been received and compared and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county and by publishing a like notice in a newspaper printed in the county at least once a week for 4 weeks.

(2) In the notice provided for in this section, the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than 90 days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: (1)En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R.C.M. 1921; Cal. Pol. C. Sec. 3981; re-en. Sec. 4373, R.C.M. 1935; amd. Sec. 2, Ch. 406, L. 1973; Sec. 16-305, R.C.M. 1947; (2)En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907; re-en. Sec. 4374, R.C.M. 1921; Cal. Pol. C. Sec. 3982, re-en. Sec. 4374, R.C.M. 1935; Sec. 16-306, R.C.M. 1947; R.C.M. 1947, 16-305, 16-306.

7-2-2607. Transmittal of election results. Whenever any election has been held as provided for in this part, the statement made by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk. Whenever the board gives the notice prescribed by 7-2-2606(2), they must transmit a certified copy thereof to the secretary of state.

History: **En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907; re-en. Sec. 4375, R.C.M. 1921; Cal. Pol. C. Sec. 3983; re-en. Sec. 4375, R.C.M. 1935; R.C.M. 1947, 16-307.**

7-2-2608. Frequency of elections on question of moving county seat. (1) When an election has been held and a majority of the votes are not cast for some place other than that fixed by law as the existing county seat, no second election for the removal thereof may be held within 4 years thereafter.

(2) When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this part.

History: **(1)En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907; re-en. Sec. 4376, R.C.M. 1921; Cal. Pol. C. Sec. 3984; re-en. Sec. 4376, R.C.M. 1935; Sec. 16-308, R.C.M. 1947; (2)En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907; re-en. Sec. 4377, R.C.M. 1921; Cal. Pol. C. Sec. 3985; re-en. Sec. 4377, R.C.M. 1935; Sec. 16-309, R.C.M. 1947; R.C.M. 1947, 16-308, 16-309; amd. Sec. 13, Ch. 250, L. 1979.**

Part 27
Abandonment and Consolidation of Counties

Part Cross-References

Election required to change county boundaries, Art. XI, sec. 2, Mont. Const.

7-2-2701. Abandonment and consolidation of counties. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries may be attached to and made a part of some adjoining county in the manner provided by this part.

History: **En. Sec. 1, Ch. 105, L. 1937; R.C.M. 1947, 16-4001.**

7-2-2702. Petition for abandonment of county. (1) A petition may be filed with the county clerk of a county asking that the question of abandoning and abolishing the organization and corporate existence of the county and attaching its territory to and making the territory a part of some adjoining county be submitted to the qualified electors of the county at an election. The petition must state the name of the adjoining county to which the territory of the county to be abandoned and abolished will be attached and made a part.

(2) The petition must be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of the county, must contain the post-office address and voting precinct of each individual signing it, and must state the name and address of three individuals to whom notice of the insufficiency of the petition must be sent if the petition does not have the required number of signatures of registered electors. A person, after signing the petition, may not be allowed or permitted to withdraw the person's signature or name from the petition.

History: **En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 280, Ch. 571, L. 1979; amd. Sec. 280, Ch. 61, L. 2007.**

7-2-2703. Processing of petition — certification to county commissioners. (1) It is the duty of the election administrator, within 30 days after the filing of the petition, to examine it and to ascertain and determine from the registration records of the county whether the petition is signed by the required number of registered electors. The election administrator may be authorized by the board of county commissioners to employ additional help in the administrator's office to assist in the work of examining the petition, and the board shall provide for their compensation.

(2) When the examination is completed, the election administrator shall attach to the petition the administrator's certificate, properly dated and signed, showing the result of the examination. If the certificate shows that the petition is signed by the required number of registered electors, the election administrator shall present the petition to the board at its first regular meeting after the date of the certificate.

History: **En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 281, Ch. 571, L. 1979; amd. Sec. 281, Ch. 61, L. 2007.**

7-2-2704. Hearing on petition by county commissioners — notice. (1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the election administrator attached thereto and showing that the petition has been signed by not less than 35% of the registered electors of the county whose names appear upon the registration records of the county, as provided in 7-2-2702 and 7-2-2703, the board shall, immediately upon presentation of the petition, make and enter an order in its minutes fixing a day for considering and taking final action on the petition. The date for final action shall be not less than 30 or more than 35 days after the date when the order is made.

(2) The board shall cause a notice to be published as provided in 7-1-2121 to the effect that the petition has been presented to the board asking for the abandonment and abolishment of the county and that any registered electors of the county interested therein may appear and be heard thereon.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(1); amd. Sec. 282, Ch. 571, L. 1979; amd. Sec. 3, Ch. 349, L. 1985.**

Cross-References

Official newspaper of county, 18-7-411.

7-2-2705. Petition to amend proposed consolidation. (1) At any time prior to 5 days before the date fixed for consideration and final action on the petition, 50% of the registered electors residing within a particular part or portion of the county may file with the county clerk of the county a petition in writing, signed by them, asking that the part or portion of the county within which the petitioners reside not be attached to the county designated in the petition for abandonment but be attached to some other adjoining county. A person, after signing the petition, may not be allowed or permitted to withdraw the person's signature or name from the petition.

(2) The petition authorized by subsection (1) must definitely, particularly, and accurately describe the boundaries of the part or portion of the county that the petitioners desire to be attached to the other adjoining county and must specify and name the other adjoining county to which the part or portion is to be attached if the county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of the county, asking that, if the county is abandoned, the territory embraced within the boundaries described in the petition be attached to and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part); amd. Sec. 282, Ch. 61, L. 2007.**

Cross-References

County boundary descriptions, see anno. vol. 1.

7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners. Whenever any petition is filed under 7-2-2705, the election administrator shall immediately examine the petition and determine from the registration records of the county whether the petition has been signed by the required number of registered electors and shall attach to the petition the administrator's certificate showing the total number of registered electors residing within the boundaries described in the petition and the number of registered electors whose names appear on the petition and shall deliver the petition, with the certificate attached, to the board of county commissioners when the board meets to consider and take final action on the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part); amd. Sec. 283, Ch. 571, L. 1979; amd. Sec. 283, Ch. 61, L. 2007.**

7-2-2707. Action on petitions — resolution. (1) On the day fixed by the board for consideration and final action on such petition for abandonment, the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties other than the county named in such petition for abandonment and shall determine the sufficiency of each such petition filed and shall enter its findings with regard thereto in its minutes. Said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes.

(2) Said resolution must be signed by the members of the board, and the county clerk must, within 5 days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached if abandoned.

History: **En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part).**

7-2-2708. Form of resolution. The resolution authorized by 7-2-2707 shall be in substantially the following form:

Whereas, there has been filed with the election administrator of (name) county, Montana, a petition asking that the organization and corporate existence of the county be abandoned and abolished and its territory attached to and made a part of an adjoining county, the county of (name), Montana; and

Whereas, the petition has been presented to the board of county commissioners of (name) County, with a certificate of the election administrator of the county attached thereto showing that the petition has been signed by not less than 35% of the registered electors of the county; and

(If a petition for attaching any part or portion of the county, in case of abandonment, to an adjoining county or counties other than the county named in the petition for abandonment and found to have been signed by the required number of registered electors, insert the following for each petition:)

Whereas, there has been filed a petition signed by not less than 50% of the registered electors residing within that part or portion of the county described as (give description as contained in petition), praying that the part or portion of the county within the boundaries be attached to and made a part of the county of (name of county given in petition) if the county is abandoned.

Now, therefore, be it resolved that if (name) County shall be abandoned and abolished, the territory embraced within its boundaries shall be attached to and become part of the following: (if all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment).

Be it further resolved that the county clerk of (name) County, Montana, make copies of this resolution, each with a copy of said petition for abandonment with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted), and certify to the same and affix the seal of the county thereto and transmit one of the copies to the governor of Montana and one of the copies to the clerk of each county to which any part of the county is to be attached if abandoned.

History: **En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part); amd. Sec. 284, Ch. 571, L. 1979.**

7-2-2709. Election on question of abandonment and consolidation. (1) (a) Within 14 days after transmittal of the resolution provided for in 7-2-2707, the boards of county commissioners of the county in which the petition referred to in the resolution was filed and of each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, would be attached and made a part, shall, in a joint meeting and by joint resolution of the boards, call a special election in all affected counties to be held in conjunction with the next regular or primary election.

(b) The joint resolution shall fix a day for holding the election in the counties. If a general election will be held in the counties not less than 90 days or more than 120 days after the date of the resolution provided for in 7-2-2707, the joint resolution must direct that the question be submitted to the registered electors of the counties at the general election. The joint resolution must be filed in the office of the secretary of state, and copies of the resolution must be transmitted to the election administrator of each of the counties in which the election is to be held.

(2) At the election there must be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county is to be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished is to be attached and made a part if the county is abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution must be attached to and become a part of the county.

History: **En. Sec. 5, Ch. 105, L. 1937; R.C.M. 1947, 16-4005; amd. Sec. 285, Ch. 571, L. 1979; amd. Sec. 2, Ch. 79, L. 1983; amd. Sec. 3, Ch. 387, L. 1995.**

7-2-2710. Procedure to hold election. (1) The election administrator of each of the counties, after receiving a copy of the election proclamation, shall present it to the board of county commissioners if the board is then in session or, if not in session, then at the first meeting held thereafter. The board of county commissioners of each of the counties shall issue the proclamations and give the notices of election which are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election. The proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and attached to and made a part of such county if the county is abandoned.

(2) The election administrator of each of the counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

(3) The election shall be held, voted, counted, and returns made and canvassed in the manner provided by the general election laws of this state.

History: **En. Secs. 6, 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4006, 16-4007(part); amd. Sec. 286, Ch. 571, L. 1979.**

Cross-References

Notice required for special elections, 13-1-108.

7-2-2711. Form of ballot. (1) At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

> FOR the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).
>
> AGAINST the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

(2) The question to be submitted to the qualified electors of the counties designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished is to be attached and made a part shall be as follows:

> FOR attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.
>
> AGAINST attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

History: **En. Sec. 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4007(part).**

7-2-2712. Canvass of returns — proclamation of results. (1) The board of county commissioners of each county, acting as a canvassing board, shall, within 10 days after the election, canvass the returns of the election. Within 5 days after the canvass, the election administrator of each county shall make and enter in the records of the board a statement of the vote in the county and transmit to the secretary of state, by certified mail, an abstract of the vote, which must be marked "election returns".

(2) Within 10 days after receiving the abstracts from all counties in which the election was held and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of the board, shall make and file in the secretary of state's office a statement of the canvass and transmit a copy of the canvass to the governor.

(3) Upon receipt of the copy, the governor shall issue a proclamation declaring the result of the election and shall file a copy of the proclamation in the office of the secretary of state and transmit a copy of the proclamation to the county clerk of each of the counties in which the election was held. Each county clerk shall file the proclamation in the clerk's office and present the proclamation to the board of county commissioners of that county at the first meeting of the board after the copy has been received by the clerk.

History: En. Sec. 8, Ch. 105, L. 1937; R.C.M. 1947, 16-4008; amd. Sec. 287, Ch. 571, L. 1979; amd. Sec. 284, Ch. 61, L. 2007.

Cross-References

Canvass of election returns, Title 13, ch. 15.

7-2-2713. Effect of election results. (1) If at the election a majority of the votes cast in the county in which the petition for abandonment was filed are cast in favor of the abandonment and abolishment of the county and if a majority of the votes in the county designated in the petition as the county to which the territory of the abandoned county shall be attached are cast in favor of attachment, then:

(a) (i) the organization and the political and corporate existence of the county in which the petition for abandonment was filed terminate;

(ii) the county is abandoned, abolished, and disincorporated and ceases to exist; and

(iii) except as provided in subsection (2) of this section, its territory is attached to and becomes a part of the counties designated in the resolution adopted under 7-2-2707; and

(b) the terms of office of each of the officers of the abandoned county and of the members of the board of county commissioners thereof terminate at midnight on the following June 30.

(2) If at the election a majority of the votes in any adjoining county named in the resolution adopted under 7-2-2707, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, are cast against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of the territory described in the resolution attaches and becomes a part of the county designated in the petition for abandonment as the county to which the territory of the abandoned county attaches.

History: En. Sec. 9, Ch. 105, L. 1937; R.C.M. 1947, 16-4009; amd. Sec. 14, Ch. 250, L. 1979.

7-2-2714 through 7-2-2720 reserved.

7-2-2721. Disposition of townships. The townships of a county abandoned and abolished under this part shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county. If a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county, then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county.

History: En. Sec. 10, Ch. 105, L. 1937; amd. Sec. 6, Ch. 253, L. 1975; R.C.M. 1947, 16-4010.

7-2-2722. Disposition of property. Each county to which any part of the territory of an abandoned county is attached and made a part:

(1) shall succeed to, must have, must possess, and shall own all real estate, all improvements on the property, all tangible property, and all county highways situated within the territory of the abandoned county attached to the county and all certificates of tax lien sales to lands and improvements on the lands situated within the territory; and

(2) has the same right and power to sell and assign the certificates and to apply for and obtain tax deeds to the lands and improvements and to sell and dispose of the lands and improvements as were or would have been possessed by the abandoned county if it had not been abandoned.

History: En. Sec. 11, Ch. 105, L. 1937; R.C.M. 1947, 16-4011; amd. Sec. 1, Ch. 110, L. 2007.

7-2-2723. Vesting of property and legal rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county is to be attached, subject to the provisions of this part, shall:

(1) succeed to, have, possess, and own all other property, assets, liens, rights, remedies, and claims of every kind owned and belonging to or possessed by the abandoned county on the date that county ceases to exist; and

(2) have the right to demand, collect, and receive all money to which the abandoned county was entitled for taxes for which tax lien sales had not been held, for licenses, and for other demands remaining unpaid on the date that the abandoned county ceases to exist and to enforce in any manner authorized by law all rights, remedies, and claims.

History: En. Sec. 12, Ch. 105, L. 1937; R.C.M. 1947, 16-4012; amd. Sec. 5, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in (2) near middle after "tax" inserted "lien"; and made minor changes in style. Amendment effective October 1, 2009.

7-2-2724. Disposition of records and other papers. (1) All maps, plats, papers, documents, records, record books, indexes, and files of every kind and description belonging to an abandoned and abolished county or in the possession of any of the officers thereof on the date when such county ceases to exist shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached. The same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes, and files of such county. The cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

(2) (a) If any part of an abandoned county shall be attached to and become a part of any adjoining county other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners of the county designated in said petition for abandonment:

(i) to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county;

(ii) to prepare complete and proper indexes for such transcribed records; and

(iii) to transmit such transcribed records and indexes, when completed, to such other county.

(b) If portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties.

(c) Chattel mortgages, construction and other liens, and other instruments filed but not recorded shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing, and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of 7-2-2405 through 7-2-2407 shall apply to such transcribed records.

History: En. Sec. 13, Ch. 105, L. 1937; R.C.M. 1947, 16-4013.

7-2-2725. Status of continuing contracts. Except as provided in 7-2-2726, all valid and existing contracts entered into by a county abandoned and abolished under this part which, by the terms thereof, will extend beyond the time when such county ceases to exist shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part.

History: En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part).

Cross-References

No law impairing obligation of contracts, Art. II, sec. 31, Mont. Const.

7-2-2726. Status of printing contracts. (1) If the abandoned and abolished county has entered into a printing contract in accordance with the provisions of Title 18, chapter 7, part 4, and the contract is in full force and effect on the date when the county ceases to exist, the purchase of all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached shall be divided by the board of county commissioners of the continuing county between the contract of the abandoned county and any similar existing contract entered into by the board of the continuing county in such manner as the board considers equitable and just to the holders of both contracts until the expiration of the contract entered into by the abandoned and abolished county.

(2) When a petition is filed with the election administrator of a county for the abandonment and abolishment of the county in accordance with the provisions of 7-2-2702 and 7-2-2703, the board of county commissioners of the county may not thereafter enter into any contract under the provisions of Title 18, chapter 7, part 4, until the time has expired when the petition may be presented to the board by the county clerk as provided in 7-2-2702 and 7-2-2703.

History: En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part); amd. Sec. 15, Ch. 250, L. 1979; amd. Sec. 288, Ch. 571, L. 1979.

7-2-2727. Effect of abandonment on school and special districts. (1) All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part. The members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire. If any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation in addition to their numbers as will distinguish them from the districts in the county to which such territory is attached and made a part. If the territory of any school district shall be divided and parts attached to two or more counties, such school district shall be a joint school district of such counties.

(2) All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part and shall be accounted for by said county treasurer as the funds of such districts. If a joint school district is created, the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county remaining unpaid at the time said county ceased to exist and all other money which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds.

History: En. Sec. 22, Ch. 105, L. 1937; R.C.M. 1947, 16-4022.

7-2-2728. Effect of abandonment on county high schools. (1) If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist, such county high school shall become the high school of the district in which it is situated or located and all property, both real and personal, owned by such county or acquired for and used in connection with the maintenance and operation of such county high school shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school. All lawful existing contracts of such county high school shall be assumed by and become the contracts of such school district. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

(2) All money in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the school district succeeding to the property of the county high school is attached and made a part and used and applied as follows:

(a) Any money in any bond sinking and interest funds shall be used for the payment and interest on any unpaid and outstanding high school bonds.

(b) (i) If there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all money in such county high school funds, except sinking and interest funds, shall be used for the payment of such warrants, with interest thereon.

(ii) If such money is insufficient to pay all outstanding warrants, with the interest thereon, then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

(c) If there be no such high school warrants outstanding, then the money in such funds shall be transferred to the high school fund of the school district which, under the provisions of this part, is to maintain such high school as a district high school.

(3) (a) All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished county ceases to exist, when collected, shall be deposited to the credit of such fund.

(b) All taxes levied for high school purposes and remaining unpaid when such county ceases to exist and all other money which would have gone to such high school if the county had not been abandoned and abolished, when collected, shall be deposited to the proper high school funds of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part.

History: En. Sec. 23, Ch. 105, L. 1937; R.C.M. 1947, 16-4023.

7-2-2729. Tax liability of property within abandoned county for debts of continuing county. (1) Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county under the provisions of this part, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist at the time such territory is attached to and made a part of such adjoining county.

(2) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county. None of the property situated within the territory of the abandoned county shall be subjected to any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the territory of the abandoned and abolished county was attached to and made a part thereof.

History: En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(part).

7-2-2730. Establishment of special warrant district or special funding bond district in continuing county. (1) After all warrants have been drawn and issued against the funds of the adjoining county, referred to in 7-2-2729, to pay the claims and demands existing against the adjoining county on the date when the territory of the abandoned and abolished county was attached to the adjoining county, all money in the funds of the adjoining county must be used and applied in payment of the warrants drawn against its respective funds. If that money is not sufficient to pay all of the warrants, with the interest on the warrants, then the board of county commissioners shall make an order creating a special warrant district and shall include within the district all of the territory of the adjoining county but may not include in the district any of the territory of the abandoned and abolished county. The board of county commissioners shall, subject to 15-10-420, at the time of making levies for county purposes, levy a special tax against all taxable property in the district to pay the warrants, with interest on the warrants, outstanding against the funds of the adjoining county. The board may extend the tax levy over a period of not more than 3 years.

(2) (a) If it appears to the board that it will require too large a tax levy to pay the warrant indebtedness, with interest, within 3 years, the board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries of the district all of the territory within the adjoining county but may not include in the district any of the territory of the abandoned and abolished county attached to the adjoining county. After all money in the several funds of the adjoining county applicable to payment of the warrants has been applied in payment of the outstanding warrants and interest on the warrants, the board may issue bonds in an amount sufficient to pay and redeem all warrants remaining outstanding, with interest on the warrants. An election is not required to issue the bonds.

(b) The bonds must be issued in the name of the adjoining county and must contain recitals to the effect that the principal and interest of the bonds will be paid by tax levies against the property situated within the boundaries of the adjoining county as the boundaries existed before the territory of the abandoned and abolished county was attached to the adjoining county and that none of the property within the territory of the abandoned and abolished county will be subjected to the levies. Except as otherwise provided in this section, the bonds must be issued and sold and tax levies must be fixed and made to pay the principal and interest on the bonds in the manner provided by 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7, as far as applicable, apply to the bonds.

(3) For the purposes of 15-10-420, the adjoining county and the abandoned and abolished county are considered separate taxing jurisdictions with relation to the warrants or bonds described in this section.

History: En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(a), (b); amd. Sec. 5, Ch. 370, L. 1987; amd. Sec. 8, Ch. 574, L. 2001.

7-2-2731 through 7-2-2740 reserved.

7-2-2741. Processing of claims against abandoned county. (1) All claims and demands against any abandoned and abolished county for salaries, services, wages, materials, and supplies; for all other current expenses; and for claims and demands accruing under contracts and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part. Except as provided in subsection (2), all such claims and demands shall be acted on by the board of such county, and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county.

(2) All such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county. No such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred.

History: En. Sec. 15, Ch. 105, L. 1937; R.C.M. 1947, 16-4015.

7-2-2742. Transfer and use of funds of abandoned county. (1) All money in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and shall be kept and maintained by such treasurer in separate funds in the name of such abandoned and abolished county and, except as provided in subsection (2), used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of 7-2-2724 and 7-2-2741 and the interest on such warrants.

(2) Money in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2743. Collection of taxes and other money. Taxes levied for all funds that were delinquent on the day the county ceased to exist and for which tax lien sales had not been held and all licenses and other money owing to the county at that time must be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and must be deposited to the credit of the funds of the abandoned and abolished county.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 6, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 near beginning after "tax" inserted "lien"; and made minor changes in style. Amendment effective October 1, 2009.

7-2-2744. Transfer of money when claims against fund satisfied. (1) When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such county in which there is not sufficient money to pay the warrants issued and outstanding against the same, with interest thereon.

(2) If, after payment of all warrants issued against all such funds, balances remain in any thereof, the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2745. Procedure if insufficient funds — special warrant district or special funding bond district. (1) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of 7-2-2724 and 7-2-2741, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part that the money in the several funds of such abandoned and abolished county, together with all money which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses, and other sources owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist.

(2) If it shall appear to the satisfaction of the board that a tax levy sufficient to pay such warrants and interest, when spread over a term of 3 years, will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2746. Details relating to special warrant district. (1) The board of county commissioners creating a special warrant district shall, at the time of making and fixing tax levies for county purposes, subject to 15-10-420, make and fix a levy against all taxable property within the special warrant district for the payment of the warrants and the interest on the warrants. The proceeds of the levy, when collected, must be deposited by the county treasurer in a separate fund that must be used for the payment of the warrants and interest on the warrants.

(2) The tax levy is not required to be made at a rate that will pay all of the warrants, with interest, in 1 year, but if the board considers it in the best interests of the taxpayers owning property within the special warrant district, the levy may be spread over a term of not more than 3 years.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 9, Ch. 574, L. 2001.

7-2-2747. Details relating to special funding bond district. (1) The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of a special funding bond district created pursuant to 7-2-2745(2), and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district.

(2) (a) After such district has been created and established, the board of trustees shall direct the county treasurer to use and apply all money in the several funds of the abandoned and abolished county, except money in any bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the interest thereon. Said board of trustees shall thereupon issue and sell bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon. The proceeds derived from the sale of such bonds shall be used for such purpose and no other.

(b) All taxes levied for the payment of the principal and interest of such bonds, all taxes levied by the abandoned and abolished county for all of its funds (except bond sinking and interest funds) delinquent at the time such county ceased to exist, and all money owing to such abandoned and abolished county from all other sources shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds and for no other purpose.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2748. Special funding bond district bonds. (1) Bonds issued under 7-2-2747 shall not be issued for a longer period than 10 years and shall be issued without submitting the question of doing so to any election. Such bonds shall be issued in the name of such district and shall be signed by the trustees. The clerk shall attest the same and affix the seal of the district thereof, and they shall be registered in the office of the county treasurer, who shall certify such registration on such bonds. Except as otherwise provided herein and insofar as the same are not in conflict herewith, all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the issuance, sale, and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes.

(2) There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same is issued and that said bonds do not incur, create, or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 6, Ch. 370, L. 1987.

7-2-2749. Payment of outstanding bonds of abandoned county. (1) If any abandoned and abolished county shall have any bonds outstanding and unpaid at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

(2) Any and all money in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund. All taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, all taxes levied for such sinking and interest fund in accordance with the provisions of 7-2-2742 through 7-2-2750, and all other money coming to the hands of such county treasurer for the use or benefit of such abandoned county, when not required for any other purposes under the provisions of this part, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 7, Ch. 370, L. 1987.

7-2-2750. Procedure to collect and transmit taxes when several counties involved. (1) Whenever any levy is made under the provisions of 7-2-2745 through 7-2-2749, the county clerk of the county in which the board of county commissioners makes the levy shall immediately certify the levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached.

(2) (a) The county clerk of each other county shall compute and extend the taxes against the property within the portion of the abandoned county that has been attached to the clerk's county, and the treasurer of that county shall collect the taxes at the same time and in the same manner that other taxes are collected by the county treasurer.

(b) Each county treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all taxes paid to and collected by the county treasurer to the treasurer of the county in which the board made the tax levy.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 285, Ch. 61, L. 2007.**

7-2-2751. Disposition of money of abandoned district. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds under the provisions of 7-2-2724 and 7-2-2741 have been fully paid, with the interest thereon:

(1) any balance remains in such funds, such balance, with any and all money thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited:

(a) to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748; and

(b) if there be no such fund, then to the credit of any bond sinking and interest fund under 7-2-2749 and 7-2-2750; and

(2) after all warrants issued and drawn against any of such funds with the interest thereon, and all district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748 and all bonds referred to in 7-2-2749 have been fully paid, then any balance remaining in any of such funds and all money accruing to any or all of such funds thereafter from any and all sources shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part, as its board of county commissioners may direct.

History: **En. Sec. 17, Ch. 105, L. 1937; R.C.M. 1947, 16-4017.**

7-2-2752. Liability for and payment of indebtedness of abandoned county. It is intended by the provisions of this part that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of, or be paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all money in all funds of an abandoned and abolished county at the time it ceases to exist and all money thereafter received by such funds from the payment of delinquent taxes and unpaid licenses and from all other sources owing to such county at the time it ceased to exist and all money received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county. Such county to which any part of its territory is attached and made a part shall receive only such balance of any such money as may remain after all of the indebtedness and cost are fully paid.

History: **En. Sec. 21, Ch. 105, L. 1937; R.C.M. 1947, 16-4021.**

7-2-2753. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: **En. Sec. 19, Ch. 105, L. 1937; amd. Sec. 2, Ch. 388, L. 1975; R.C.M. 1947, 16-4019; amd. Sec. 16, Ch. 250, L. 1979.**

7-2-2754. Ownership and management of property acquired by continuing county. Each county to which any part of an abandoned and abolished county is attached becomes the owner, under the provisions of this part, of the real and tangible personal property of the abandoned and abolished county and may use all of this property for county purposes, may lease any of this real estate, or may sell any of the real estate or personal property.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(1).**

7-2-2755. Lease of acquired real property. No real property may be leased unless the board of county commissioners presents to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease. The petition shall be approved by the judge and filed in the office of the clerk of the county.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(3).**

7-2-2756. Sale of acquired real property. (1) Real estate may not be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of that county. Each sale of real estate must be made at public sale, and notice must be published as provided in 7-1-2121. The real estate may not be sold for a price less than 90% of the appraised value.

(2) The full purchase price of any real estate sold may not be required to be made in one payment. The purchaser may pay the price in four installments, the first of which must be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest at not less than 5% a year. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser and the contract must be recorded in the office of the county clerk. When payment in full has been made for real estate, the presiding officer of the board shall execute and deliver the proper bill of sale or deed to the purchaser or the purchaser's successor in interest.

(3) All real estate sold, with any improvements on the real estate, is subject to assessment and taxation annually to the purchaser or the purchaser's successor in interest at a value equal to the amount paid on the purchase price until the purchase price is fully paid, when the real estate must be assessed at its full cash value. Any improvements placed on any real estate after its purchase are subject to assessment and taxation at the full cash value of the improvements.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part); amd. Sec. 4, Ch. 349, L. 1985; amd. Sec. 286, Ch. 61, L. 2007.**

7-2-2757. Sale of acquired personal property. (1) Personal property having a value in excess of $100 may not be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners. A sale of any personal property must be made at public sale after notice and for a price not less than 90% of the appraised value.

(2) Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser and the contract must be recorded in the office of the county clerk. When payment in full has been made for any personal property, the presiding officer of the board shall execute and deliver the proper bill of sale or deed to the purchaser or the purchaser's successor in interest.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part); amd. Sec. 287, Ch. 61, L. 2007.**

7-2-2758. Compensation for appraisers. The compensation of all appraisers appointed under the provisions of 7-2-2756 and 7-2-2757 shall be fixed by the district judge appointing the same.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).**

7-2-2759. Distribution of money derived from acquired property. (1) Money received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such county to the treasurer of the county designated in such petition for abandonment.

(2) All money received from the sale of personal property and from the leasing or sale of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows:

(a) if there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county, such money shall be applied in payment of such warrants and interest;

(b) if there are no warrants outstanding but district bonds have been issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748, then the money shall be deposited in the sinking and interest fund for district bonds;

(c) if there are no district bonds outstanding, then the money shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist; and

(d) if there are no bonds outstanding, then the money shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the taxable value of the property in each part on January 1 immediately preceding the abandonment bears to the taxable value of all the property in the abandoned county, and the apportioned money shall be deposited in the funds of each county as the boards of county commissioners of the counties may direct.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).**

Parts 28 through 40 reserved

Part 41

Organization and Incorporation of New Municipalities

7-2-4101. Petition to organize city or town. (1) Whenever the inhabitants of any part of a county desire to organize as a city or town, the inhabitants may apply by petition, signed by not less than 300 registered electors or two-thirds of the registered electors, whichever is less, who are residents of the state and residing within the limits of the proposed city or town, to the board of county commissioners of the county in which the proposed area is situated.

(2) (a) The petition must describe the limits of the proposed city or town and wards of the proposed city or town. A proposed ward must contain 50 or more registered electors and must have at least 200 inhabitants for each square mile of land area.

(b) The proposed city or town must contain a post office within the proposed area of the city or town.

(c) The petitioners shall attach to the petition a map of the proposed area to be incorporated and state the name of the proposed city or town.

(3) The petition and map must be filed in the office of the election administrator.

History: **En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 289, Ch. 571, L. 1979; amd. Sec. 1, Ch. 255, L. 1981; amd. Sec. 1, Ch. 274, L. 2007.**

7-2-4102. Census of proposed municipality. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board, and the same must be filed by it in the county clerk's office.

History: **En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part).**

7-2-4103. Prerequisites to organization of municipality. No municipal corporation may be formed unless:

(1) (a) the number of inhabitants is 300 or upwards; or

(b) the community was a townsite owned and built by the U.S. government prior to April 3, 1981; and

(2) the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town or there is presented to the board appropriate evidence that any presently incorporated city or town within 3 miles which legally could annex has refused to annex the proposed territory.

History: **En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 2, Ch. 255, L. 1981.**

7-2-4104. Election on question of organization. (1) After filing the petition and census, if there is the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners shall call an election of all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board. If possible, the election must be held in conjunction with a regular or primary election.

(3) The ballots used at the election must contain the words "For incorporation" or "Against incorporation", and all elections must be conducted as provided in Title 13.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 290, Ch. 571, L. 1979; amd. Sec. 4, Ch. 387, L. 1995.

7-2-4105. Notice of election on question of organization. Notice of the election shall be published as provided in 13-1-108. The notice shall contain a description of the boundaries of the city or town.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 291, Ch. 571, L. 1979.

7-2-4106. First election for officers. (1) When the incorporation of a city or town is completed, the board of county commissioners shall give notice for 30 days in a newspaper published within the limits of the city or town or, if none is published within the limits, by posting notices in six public places within the limits of the city or town of the time and place or places of holding the first election for offices of the city or town. The election may be held in conjunction with a regular or primary election.

(2) At the election, all the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board shall appoint election judges and canvass and declare the result of the election. The election must be conducted in the manner required by law for the election of county officers.

(4) If the first election of officers is not held in conjunction with a regular or primary election, the offices filled in the election may be occupied only until the next election regularly scheduled for those offices.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Secs. 4722, 4723, Pol. C. 1895; re-en. Secs. 3210, 3211, Rev. C. 1907; re-en. Secs. 4963, 4964, R.C.M. 1921; re-en. Secs. 4963, 4964, R.C.M. 1935; R.C.M. 1947, 11-205, 11-206(part); amd. Sec. 292, Ch. 571, L. 1979; amd. Sec. 5, Ch. 387, L. 1995; amd. Sec. 1, Ch. 162, L. 1999.

Cross-References

Electors — qualifications, 13-1-111 through 13-1-114.
Election judges, Title 13, ch. 4.
General election procedures, Title 13, ch. 12 through 17.

7-2-4107. Officers elected at first election. (1) At the election provided for in 7-2-4106, there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two city council members from each ward into which the city is divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two city council members from each ward;

(c) in a town, a mayor and two city council members from each ward.

(2) Those elected hold office until the first Monday of January after the first annual election and until their successors are elected and qualified. The persons elected shall qualify in the manner prescribed by law for county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907; re-en. Sec. 4964, R.C.M. 1921; re-en. Sec. 4964, R.C.M. 1935; R.C.M. 1947, 11-206(part); amd. Sec. 380, Ch. 571, L. 1979; amd. Sec. 288, Ch. 61, L. 2007.

Cross-References

Qualification of county officers, Title 7, ch. 4, part 22; 7-4-2201.

7-2-4108 through 7-2-4110 reserved.

7-2-4111. Tax base — maintenance agreements. When a city or town is incorporated, a county may, subject to 15-10-420, retain the property within the city or town as a part of the tax base of the county for purposes of levying taxes against the property for the maintenance of property within the city or town until the city or town imposes and collects a levy for maintenance of the property for which the county mill levy is imposed. The city or town and the county may enter into an agreement for maintenance of property pending an election on a city or town levy.

History: En. Sec. 1, Ch. 353, L. 1999; amd. Sec. 10, Ch. 574, L. 2001.

Part 42
Addition to Municipalities

7-2-4201. Additions to municipalities. Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

(1) upon filing the map or plat thereof in the office of the county clerk; and

(2) upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.

7-2-4202. Control of additions. The council has control of all such additions.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4203. Imposition of conditions for approval of addition. (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town or in the addition thereto contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with and the plat thereof has been submitted to and approved by the mayor and council and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 1, Ch. 130, L. 1981.

7-2-4205. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 1, Ch. 447, L. 1981; amd. Sec. 1, Ch. 66, L. 1995.

7-2-4206 and 7-2-4207 reserved.

7-2-4208. Annexation across county boundaries. (1) Except as provided in subsection (2), in all instances of annexation allowed under parts 42 through 47 of this chapter, a municipal governing body may not annex territory in a county that is different from the county in which the municipality is located.

(2) Annexation by a municipality of territory in a county that is different from the county in which the municipality is located may occur only if the municipality and the county execute an interlocal agreement that provides for a joint city-county planning board and jurisdictional equality.

History: En. Sec. 1, Ch. 296, L. 2007.

7-2-4209 reserved.

7-2-4210. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

7-2-4211. Inclusion of roads and rights-of-way in annexation. In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.

History: En. Sec. 1, Ch. 334, L. 2003.

Part 43
Annexation of Contiguous Land

Part Cross-References

Annexation of contiguous government land, Title 7, ch. 2, part 44.

7-2-4301. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4302. Annexation of contiguous municipalities. (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.

7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 485, L. 1997.

7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 2, Ch. 130, L. 1981.

7-2-4305. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 2, Ch. 447, L. 1981; amd. Sec. 2, Ch. 66, L. 1995.

7-2-4306 through 7-2-4310 reserved.

7-2-4311. Annexation of contiguous land by cities or towns. Any tracts or parcels of land that have been or may be platted into lots or blocks, streets, and alleys or platted for parks, the map or plat of which is filed in the office of the county clerk and recorder of the county in which the tracts or parcels of land are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided by law, if the platted or unplatted land is contiguous to any incorporated city or town, may be embraced within the corporate limits of the city or town, and the boundaries of the city or town may be extended to include the platted or unplatted land in the manner provided in 7-2-4312 through 7-2-4314 and 7-2-4325.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 485, L. 1997.

7-2-4312. Resolution of intent by city or town — notice. When, in the judgment of any city or town council, expressed by a resolution that is passed and adopted, it is in the best interest of the city or town and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of the city or town be extended to include the platted tracts or parcels of land or unplatted land within the corporate limits of the city or town, the city or town clerk shall:

(1) immediately notify, in writing, all registered voters in the territory to be embraced; and

(2) publish a notice as provided in 7-1-4127.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 526, L. 1983; amd. Sec. 3, Ch. 485, L. 1997; amd. Sec. 8, Ch. 354, L. 2001.

7-2-4313. Contents of notice — protest period. The notice under 7-2-4312 must state that:

(1) the resolution has been passed; and

(2) for a period of 20 days after the first publication of the notice, the city or town clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city or town from registered voters residing in the area proposed to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 3, Ch. 66, L. 1995; amd. Sec. 4, Ch. 485, L. 1997.

7-2-4314. Hearing on question of annexation — vote on question of annexation — resolution of annexation. (1) (a) The city or town clerk shall, at the next regular meeting of the city or town council after the expiration of the 20-day period provided for in 7-2-4313, forward all written communication received by the clerk for the city or town council's consideration.

(b) Except as provided in subsection (1)(d), if the city or town council, after considering all written communication, adopts a resolution approving the annexation, the implementation of the resolution must be approved by the vote of the registered voters residing in the area proposed for annexation. The resolution must state the date on which the proposed annexation is intended to take effect.

(c) Within 45 days of adopting the resolution for annexation, the city or town council shall submit the question of approving the resolution to the registered voters residing in the area proposed for annexation. A notice of election must be mailed to all registered voters residing in the area proposed for annexation.

(d) If the area to be annexed contains less than 300 recorded parcels, the city or town council, after considering all written communication, may adopt a resolution approving the annexation and the boundaries of the city or town must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. An area annexed pursuant to this subsection may include land used for railroad purposes. A city or town council may not annex by resolution an area containing less than 300 recorded parcels if the resolution is disapproved in writing by a majority of real property owners of the area proposed to be annexed. If the resolution is disapproved by a majority of the landowners, the city or town council may not on its own initiative propose further resolutions relating to the annexation of the area or any portion of the area, without petition, for a period of 1 year.

(2) Except as provided in subsection (1)(d), further resolutions relating to the annexation of the area or any portion of the area may not be considered or acted upon by the council on its own initiative, without petition, for a period of 5 years from the date of disapproval by the voters as provided in subsection (1).

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 4, Ch. 66, L. 1995; amd. Sec. 5, Ch. 485, L. 1997.

7-2-4315 through 7-2-4320 reserved.

7-2-4321. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 320, L. 1985.

7-2-4322. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4323. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 5, Ch. 66, L. 1995.

7-2-4324. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 6, Ch. 66, L. 1995.

7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole adjoin a city or town, the tracts may be included in one resolution under this part, although one or more of the tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3); amd. Sec. 2, Ch. 320, L. 1985; amd. Sec. 6, Ch. 485, L. 1997.

7-2-4326 through 7-2-4330 reserved.

7-2-4331. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 44
Annexation of Contiguous Government Land

7-2-4401. What constitutes contiguous land for purpose of part. The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

7-2-4402. Annexation of contiguous government land. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4403. Request for annexation by government official. The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of or the holder of the beneficial interest in the land desires to have it annexed.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4404. Resolution of intent to annex. Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4405. Notice of resolution — protest period. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).

7-2-4406. Hearing on question of annexation — resolution of annexation. (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4407. Filing of resolution and other papers. Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 3, Ch. 130, L. 1981.**

7-2-4409. Provision of services. In all cases of annexation under current Montana law, services must be provided as specified in Title 7, chapter 2, part 47, except when mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 7, Ch. 66, L. 1995.**

7-2-4410 through 7-2-4420 reserved.

7-2-4421. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Part 45
Annexation of Wholly Surrounded Land

7-2-4501. Annexation of wholly surrounded land. A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979; amd. Sec. 1, Ch. 200, L. 1983.**

7-2-4502. Protest not available. Wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 8, Ch. 66, L. 1995; amd. Sec. 7, Ch. 485, L. 1997.**

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).**

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: **En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.**

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.**

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981; amd. Sec. 9, Ch. 66, L. 1995.

7-2-4507 through 7-2-4510 reserved.

7-2-4511. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 46
Annexation by Petition

7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 ⅓% of the registered electors of the area proposed to be annexed, shall without delay submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of 50% of the real property in the area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 1, Ch. 279, L. 1985; amd. Sec. 10, Ch. 66, L. 1995.

Cross-References

Petition requirements generally, 7-1-4130.

7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor.

History: En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979.

Cross-References

Elections generally, Title 13.

General elections, 13-1-104.

7-2-4603. Notice of election. (1) The council or legislative body shall publish notice of the election as provided in 13-1-108.

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) The notice of election shall designate the date of the election.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

7-2-4604. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must state that a petition has been filed with the council or other legislative body with the signatures of 33 ⅓% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering a general or special election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and that the boundaries of the city or town will be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of 50% of the area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

History: (1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 2, Ch. 279, L. 1985; amd. Sec. 11, Ch. 66, L. 1995.

7-2-4607. Filing of resolution. (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).

7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall be annexed under the provisions of this part.

History: En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509.

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 5, Ch. 130, L. 1981.

7-2-4610. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 4, Ch. 447, L. 1981; amd. Sec. 12, Ch. 66, L. 1995.

7-2-4611 through 7-2-4620 reserved.

7-2-4621. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

7-2-4622 through 7-2-4624 reserved.

7-2-4625. Annexation district. An incorporated city or town may create an annexation district outside of the city or town. Territory may be included in an annexation district only upon an agreement between the city or town and the owner of the property included in a district. The agreement may specify the duration of the district, which may not exceed 10 years. A city or town may provide the services specified in the agreement between the city or town and the property owner to the property in the district. The city or town may impose a tax levy or a fee on the owner of the property within the annexation district based upon the difference between the municipal levy or fee and the nonmunicipal levy or fee. By the end of the period specified in the agreement, the levy or fee must be the full amount that a resident of the city or town would pay in the year that the property is annexed. Unless the agreement provides otherwise, the property in the district is annexed after the period specified in the agreement, and the district is dissolved. A delinquency in a payment by the owner of property in the annexation district is collectible in the same manner that other delinquent taxes or fees are collectible.

History: En. Sec. 1, Ch. 324, L. 2001.

Part 47
Annexation With the Provision of Services

7-2-4701. Short title. This part shall be entitled "The Planned Community Development Act of 1973".

History: En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.

7-2-4702. Findings. (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4703. Purpose. It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4704. Definitions. The following terms when used in this part have the following meanings except when the context clearly indicates a different meaning:

(1) "Contiguous" means any area that, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any incorporated city or town.

(3) "Real property owner" means a person who holds an estate of life or inheritance in real property or who is the purchaser of an estate of life or inheritance in real property under a contract for deed, some memorandum of which has been filed in the office of the county clerk.

History: En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516; amd. Sec. 13, Ch. 66, L. 1995.

7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2).

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979; amd. Sec. 14, Ch. 66, L. 1995.

7-2-4706. Appeal if municipal governing body fails to act on petition. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

7-2-4707. Resolution of intention to annex. The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

7-2-4708. Notice of hearing. The notice of public hearing must:

(1) be published as provided in 7-1-4127;

(2) describe clearly the boundaries of the area under consideration; and

(3) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2); amd. Sec. 9, Ch. 354, L. 2001.

7-2-4709. Hearing on question of annexation. (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

7-2-4710. Protest. (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.

(2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a period of 1 year from the date of disapproval.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8); amd. Sec. 1, Ch. 586, L. 1985; amd. Sec. 15, Ch. 66, L. 1995.

Cross-References

Protest, 7-1-4132.

7-2-4711. Ordinance of annexation. The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4712. Contents of ordinance of annexation. (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4713. Effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4714. Filing of annexation order. (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: **En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.**

7-2-4715. Simultaneous proceedings for several areas. If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).**

7-2-4716. Effect of annexation. (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).**

7-2-4717. Certain expenditures authorized. (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

History: **En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.**

7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979; amd. Sec. 6, Ch. 130, L. 1981.**

7-2-4719 through 7-2-4730 reserved.

7-2-4731. Plans and report on extension of services required. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c); and

(iii) the general land use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body shall approve the report and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

History: (1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3).

7-2-4732. Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

(2) The plans shall:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part).

7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979.

7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of the attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2); amd. Sec. 1, Ch. 582, L. 1999.

7-2-4735. Guidelines for new boundaries of municipality. In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridgelines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. (1) A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to any person or business located in the area for 5 years following annexation except:

(a) upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; or

(b) after the expiration of 5 years, if a majority of the residents of the annexed or incorporated area sign a petition requesting the municipality to provide the service.

(2) If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or, after the expiration of 5 years, if a majority of the residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.

(3) For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services.

History: En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979; amd. Sec. 1, Ch. 381, L. 1987.

Cross-References

Public Service Commission — certification of garbage or solid waste services, Title 69, ch. 12, part 3.

7-2-4737 through 7-2-4740 reserved.

7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing body.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2); amd. Sec. 16, Ch. 66, L. 1995.

Cross-References

Service of civil process, Title 25, ch. 3, part 2.

7-2-4742. Court review and decision when area annexed. (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).

7-2-4743. Presumption that municipal actions lawful. All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).

Cross-References

Presumption that official action regularly performed, 26-1-602.

7-2-4744. Appeal from district court. Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4745. Effect of appeal on effective date of annexation. If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4746. Appeal provisions exclusive. No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).

7-2-4747 through 7-2-4750 reserved.

7-2-4751. Right to court review when area not annexed. (1) If within 60 days of receiving a valid petition the governing body fails to pass a resolution of intent to annex, the petitioners may file a petition in the district court of the district in which the municipality is located.

(2) The municipality must be designated as the defendant in the cause and is required to appear and answer as in other cases.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part); amd. Sec. 17, Ch. 66, L. 1995.

7-2-4752. Court review and decision when area not annexed. (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).

7-2-4753 through 7-2-4760 reserved.

7-2-4761. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Part 48
Exclusion of Land

7-2-4801. Use of terms contiguous and adjacent. For the purposes of this part, the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4802. Exclusion of land from municipalities. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this part.

History: **En. Sec. 1, Ch. 33, L. 1927; re-en. Sec. 4979.1, R.C.M. 1935; R.C.M. 1947, 11-501.**

7-2-4803. Petition to exclude land. (1) A petition in writing, signed by a number of the qualified electors residing within the corporate limits of such city or town equal to a majority of the votes cast at the last city election held therein or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town.

(2) Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

Cross-References

Petitions, 7-1-4130.

7-2-4804. Contents of petition. (1) Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made. Said petition shall also describe the streets, avenues, alleys, and public places, if any, in the territory sought to be excluded and shall distinctly specify which of said streets, avenues, alleys, or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town.

(2) Such petition shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4805. Resolution of intent to exclude land — notice. If the council by resolution finds that the petition is signed by the requisite number of qualified electors of the city or town or by the owners of not less than three-fourths in value of the territory to be excluded, that the territory petitioned to be excluded is within the corporate limits and on the border of the corporate limits, and that the granting of the petition is in the best interest of the city or town and the inhabitants and will not materially mar the symmetry of the city or town, the city or town clerk shall publish a notice as provided in 7-1-4127.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part); amd. Sec. 10, Ch. 354, L. 2001.**

7-2-4806. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive from the owners of the territory proposed to be excluded expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

Cross-References

Protest, 7-1-4132.

7-2-4807. Hearing on question of exclusion — resolution of exclusion. (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, provide the council with all written communications received by the clerk for its consideration. If after considering the communications the council adopts a resolution to that effect, the boundaries of the city or town must be altered to exclude the territory described in the petition. The resolution must also describe the streets, avenues, alleys, and public places in the excluded territory that are to be vacated and abandoned.

(2) The resolution becomes effective 30 days after its passage and approval, and the boundary of the city or town is as set forth in the resolution.

(3) The resolution may not be finally adopted by the council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of the city or town immediately adjacent and contiguous to the territory sought to be excluded.

History: (1), (3)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; (2)En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part); amd. Sec. 289, Ch. 61, L. 2007.

7-2-4808. Resolution and revised municipal map to be filed. (1) Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located.

(2) Upon the filing of the certified copy of the resolution, all such streets, avenues, alleys, and public places to be abandoned or vacated, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property.

History: (1) En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; (2)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

7-2-4809. Liability of excluded territory for existing indebtedness. Such alteration shall not relieve any territory excluded from the limits of a city or town from its liability on account of any outstanding bonded indebtedness of such city or town or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927; re-en. Sec. 4979.4, R.C.M. 1935; R.C.M. 1947, 11-504.

7-2-4810. Jurisdiction of municipality to levy tax to pay existing indebtedness. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in 7-2-4809, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927; re-en. Sec. 4979.5, R.C.M. 1935; R.C.M. 1947, 11-505.

Part 49
Disincorporation of Municipalities

7-2-4901. Automatic disincorporation. (1) If the governing body of any city or town incorporated under the laws of Montana ceases to exist or fails to function for a period of 2 years, the city or town shall be disincorporated in the manner set forth in this part.

(2) (a) In cases where a city or town has been disincorporated by virtue of the provisions of subsection (1), the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within 60 days following the date of the order.

(b) A certified copy of the order shall be sent to the state officials named in 7-2-4906.

History: (1)En. Sec. 1, Ch. 99, L. 1973; Sec. 11-308, R.C.M. 1947; (2)En. Sec. 7, Ch. 99, L. 1973; Sec. 11-314, R.C.M. 1947; R.C.M. 1947, 11-308, 11-314.

7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner provided in this section.

(2) If the registered electors of a city or town equal in number to at least 15% of the number of electors registered at the last municipal general election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order a special election to be held within the city or town on the question of disincorporating the city or town. The election must be held in conjunction with a regular or primary election.

History: **En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(1), (2); amd. Sec. 296, Ch. 571, L. 1979; amd. Sec. 1, Ch. 504, L. 1981; amd. Sec. 3, Ch. 250, L. 1985; amd. Sec. 1, Ch. 319, L. 1993; amd. Sec. 6, Ch. 387, L. 1995.**

7-2-4903. Notice of election on question of disincorporation. Notice of the election provided for in 7-2-4902 shall be published as provided in 13-1-108.

History: **En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(3); amd. Sec. 297, Ch. 571, L. 1979.**

7-2-4904. Details of election on disincorporation. (1) The election shall be conducted in the same manner as a regular city or town election. The election returns shall be made and canvassed in the same manner as are general election returns.

(2) The form of the ballot shall be:

FOR the disincorporation of .... (insert name of city or town)

AGAINST the disincorporation of .... (insert name of city or town).

History: **(1)En. Sec. 4, Ch. 99, L. 1973; Sec. 11-311, R.C.M. 1947; (2)En. Sec. 3, Ch. 99, L. 1973; Sec. 11-310, R.C.M. 1947; R.C.M. 1947, 11-310, 11-311; amd. Sec. 298, Ch. 571, L. 1979.**

Cross-References

Elections — returns and canvassing, Title 13, ch. 12 through 16.

7-2-4905. Effect of insufficient vote to disincorporate. If it is found by the canvass of the votes that less than 60% of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of 2 years from the date of the election.

History: **En. Sec. 5, Ch. 99, L. 1973; R.C.M. 1947, 11-312.**

7-2-4906. Effect of sufficient vote to disincorporate. (1) If the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall file in their office and cause to be entered upon their proceedings an order granting the petition for disincorporation and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A certified copy of the order must be sent to the secretary of state and the director of the department of administration.

History: **En. Sec. 6, Ch. 99, L. 1973; amd. Sec. 9, Ch. 213, L. 1975; R.C.M. 1947, 11-313; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 23, Ch. 483, L. 2001.**

7-2-4907 through 7-2-4910 reserved.

7-2-4911. Certification of financial condition. (1) Upon receiving a certified copy of the order of disincorporation, the director of the department of administration shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement must include but is not limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts and taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness.

History: **En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 24, Ch. 483, L. 2001.**

7-2-4912. Management of unencumbered cash. (1) Under the supervision of the director of the department of administration or the director's designee, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check must be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place the money in a special fund, to be drawn upon as provided in this part.

History: **En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 25, Ch. 483, L. 2001.**

7-2-4913. Release of public property to county commissioners. Except as provided in 7-2-4914, upon the disincorporation of a city or town, each public officer of the city shall immediately turn over all public property of every nature and description in the officer's possession to the board of county commissioners of the county in which the city or town is situated.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part); amd. Sec. 290, Ch. 61, L. 2007.**

7-2-4914. Disposition of city court records. Notwithstanding the provisions of 7-2-4913, all court records of the city court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4915. Effect of disincorporation on prior legal rights. The disincorporation of a city or town does not invalidate or affect any right, penalty, or forfeiture accruing to the city or town or invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4916. Payment of debts and collection of receivables of disincorporated municipality. (1) The board of county commissioners of the county succeeding the disincorporated city or town shall provide for:

(a) the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred; and

(b) the collection of any indebtedness due the city or town.

(2) All instruments for the repayment of indebtedness are drawn by order of the board on the fund provided in 7-2-4912.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4917. Procedure to collect receivables. (1) The board of county commissioners shall make provisions for the collection of the amounts due a corporation and for the closing up of its affairs, and any act or acts necessary for that purpose and not otherwise provided shall, upon order of the board, be performed by the officer or officers performing similar duties for the county as if it had been performed by the proper officer of the city or town before disincorporation.

(2) The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: **En. Sec. 13, Ch. 99, L. 1973; R.C.M. 1947, 11-320.**

7-2-4918. Tax levy in event of insolvency. (1) If, at any time after the disincorporation of a city or town, there is insufficient money in the treasury to the credit of the special fund provided for in 7-2-4912 with which to pay any indebtedness of the corporation, the board of county commissioners shall, subject to 15-10-420, levy and collect from the territory formerly included within the city or town a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the indebtedness becomes due.

(2) The tax or taxes, assessments, and collections must be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within the territory or portions of territory of the disincorporated city or town for the payment of the debts. For the purposes of 15-10-420, the levy is considered a levy on the property in the city or town until the debt is paid.

(3) All money paid into the county treasury under the provisions of this part must be credited to the special fund.

History: En. Sec. 11, Ch. 99, L. 1973; R.C.M. 1947, 11-318; amd. Sec. 11, Ch. 574, L. 2001.

7-2-4919. Management of surplus assets deposited to special fund. If, after payment of the debts of the corporation and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund, money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of 7-2-4915 and 7-2-4916.

History: En. Sec. 12, Ch. 99, L. 1973; R.C.M. 1947, 11-319.

7-2-4920. Payment of costs and expenses from special county fund. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town provided for in this part shall be paid out of the special fund in the county treasury.

History: En. Sec. 14, Ch. 99, L. 1973; R.C.M. 1947, 11-321.

CHAPTER 3
ALTERNATIVE FORMS OF LOCAL GOVERNMENT

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7-3-4366. Investigatory powers of city manager.
7-3-4367. Control of conflict of interest.
7-3-4368. Execution of conveyances of real property.
7-3-4369. Appropriation of property for public or municipal purposes.
7-3-4370. Use of county buildings.
7-3-4371. Repealed.
7-3-4372. Repealed.
7-3-4373. Repealed.
7-3-4374. Details of public advertising or publication.

Part 44 — Municipal Commission-Manager Government Continued

7-3-4401. Administrative departments.
7-3-4402. Appointment of department directors.
7-3-4403. Role of department director.
7-3-4404. Appointment of boards.
7-3-4405. Establishment of civil service board.
7-3-4406. Organization of board.
7-3-4407. Classification of civil service.
7-3-4408. Role of civil service board.
7-3-4409. Role of chief examiner.
7-3-4410. Probationary period.
7-3-4411. Procedure for discharge, demotion, or suspension of employee.
7-3-4412. Retention of existing positions.
7-3-4413. Certification required to receive salary.
7-3-4414. Investigatory powers of civil service board.
7-3-4415. Prohibition on discrimination in employment.
7-3-4416. Violation of civil service provisions.
7-3-4417. Fixing compensation.
7-3-4418. Power to establish eight-hour day.
7-3-4419 through 7-3-4430 reserved.
7-3-4431. Department of finance.
7-3-4432. Accounting procedures.
7-3-4433. Claims and issuance of warrants.
7-3-4434. Purchase and sale of supplies and property.
7-3-4435. Approval required for certain contracts.
7-3-4436. Sinking fund trustees.
7-3-4437 through 7-3-4440 reserved.
7-3-4441. Department of public service.
7-3-4442. Local improvements.
7-3-4443. Utility connections.
7-3-4444. Supervision of plats.
7-3-4445. Subdivided lands.
7-3-4446. Acceptance of streets or alleys.
7-3-4447. Supervision of public places.
7-3-4448. Vacating or changing name of street.
7-3-4449. Grant of right to use or occupy public places.
7-3-4450. Renewal of franchises.
7-3-4451. Prohibition on exclusive grant or franchise.
7-3-4452. Grant to operate public utility.
7-3-4453. Assessments for snow, ice, weed, and rubbish removal.
7-3-4454 through 7-3-4460 reserved.
7-3-4461. Department of law.
7-3-4462. Office of city judge.
7-3-4463. Department of public welfare.
7-3-4464. Department of public safety.
7-3-4465. Police department.
7-3-4466. Fire department.

Part 1
General Provisions

7-3-101. Compliance with constitution. (1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) Parts 1 through 7 establish the alternative forms of government for cities, towns, counties, and consolidated governments. These parts shall be liberally construed to facilitate the adoption of a form of local government.

History: En. 47A-3-201 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-201; amd. Sec. 1, Ch. 262, L. 1979.

Cross-References

Liberal construction, Art. XI, sec. 4(2), Mont. Const.

7-3-102. Adoption of alternative form. Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

(1) the commission-executive form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);

(2) the commission-manager form (which may also be called the council-manager form);

(3) the commission form;

(4) the commission-presiding officer form;

(5) the town meeting form; or

(6) the charter form.

History: En. 47A-3-202 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-202; amd. Sec. 291, Ch. 61, L. 2007.

Cross-References

Forms of local government, Art. XI, sec. 3, Mont. Const.

7-3-103. Amendment of self-government charter or adopted alternative form of government. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors registered at the last general election of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government must be submitted to the electors at the next regular or primary election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.

History: En. 47A-3-209 by Sec. 4, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-209; amd. Sec. 2, Ch. 319, L. 1993; amd. Sec. 7, Ch. 387, L. 1995.

Cross-References

Effective date of alternative plan or amendment, 7-3-156.
Petition requirements, 7-5-132 through 7-5-136.
Elections on ballot issues, 7-5-136.

7-3-104. Limitation on change in alternative form. The electors of any unit of local government which has adopted a new alternative form of local government may not vote on the question of changing the form of local government until 3 years after the new alternative form of local government becomes effective, but the voters may vote on amendments to the alternative form or service or functional transfers.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).

Cross-References

Three-year moratorium on change, 7-3-155.

7-3-105. Plan of government. The approved plan filed with the secretary of state pursuant to subsection (3)(a) of section 14, Chapter 513, Laws of 1975, shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(3)(b).

Cross-References

Right to examine documents, Art. II, sec. 9, Mont. Const.

7-3-106. Effect of change in government. (1) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law.

(2) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).

Cross-References

Effect of adoption of new form of government, 7-3-152.
General transition provisions, 7-3-157.

7-3-107 through 7-3-110 reserved.

7-3-111. Statutory basis for elected county official government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the elected county official form of government shall be governed by the following sections:

(a) 7-3-401;
(b) 7-3-402;
(c) 7-3-412(3);
(d) 7-3-413(1);
(e) 7-3-414(1);
(f) 7-3-415(2);
(g) 7-3-416(2);
(h) 7-3-417(2);
(i) 7-3-418;
(j) 7-3-432(1);
(k) 7-3-433(1);
(l) 7-3-434(1);
(m) 7-3-435(1);
(n) 7-3-436(1);
(o) 7-3-437(1);
(p) 7-3-438(1);
(q) 7-3-439(1);
(r) 7-3-440(1);
(s) 7-3-441(1);
(t) 7-3-442(1) if the county has elected an auditor;
(u) 7-3-442(6) if the county has not elected an auditor.

(2) This form has terms of 4 years for all elected officials except commissioners who are elected to 6-year terms. The commission consists of three members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(3).

7-3-112. Statutory basis for county manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the county manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-303;
(c) 7-3-304;
(d) 7-3-305;
(e) 7-3-312(2);
(f) 7-3-313(1) or (2);

(g) 7-3-314(2);
(h) 7-3-315(1);
(i) 7-3-316(2);
(j) 7-3-317(2);
(k) 7-3-318.

(2) Commissioners are elected to 6-year terms. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(4).

7-3-113. Statutory basis for municipal council-mayor government. (1) For the purpose of determining the statutory basis of existing units of local government, each unit of local government organized under the general statutes authorizing the municipal council-mayor form of government, which does not adopt a new form, shall be governed after May 2, 1977, by the following sections:

(a) 7-3-201;
(b) 7-3-202(1);
(c) 7-3-203;
(d) 7-3-212(2);
(e) 7-3-213(3);
(f) 7-3-214(2);
(g) 7-3-215(2);
(h) 7-3-216(2);
(i) 7-3-217(1);
(j) 7-3-218(2);
(k) 7-3-219(1);
(l) 7-3-220(1);
(m) 7-3-221(3);
(n) 7-3-222(2);
(o) 7-3-223(2).

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed 20 members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(1).

7-3-114. Statutory basis for municipal commission-manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-302(1);
(c) 7-3-303;
(d) 7-3-304;
(e) 7-3-305;
(f) 7-3-312(3);
(g) 7-3-313(1);
(h) 7-3-314(2);
(i) 7-3-315(2);
(j) 7-3-316(2);
(k) 7-3-317(2);
(l) 7-3-318.

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(2).

7-3-115 through 7-3-120 reserved.

7-3-121. Purpose. The purpose of 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161 is to provide procedures for alteration of existing forms of local government.

History: En. Sec. 1, Ch. 675, L. 1979; amd. Sec. 7, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 near beginning after "7-3-121 through" inserted "7-3-125 and 7-3-141 through". Amendment effective October 1, 2009.

7-3-122. Definitions. As used in 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a water conservation and flood control district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Form of government" or "form" means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

(4) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(5) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

(7) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(8) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

History: En. Sec. 2, Ch. 675, L. 1979; amd. Sec. 20, Ch. 575, L. 1981; amd. Sec. 1, Ch. 521, L. 2007; amd. Sec. 8, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in introductory clause after "7-3-121 through" inserted "7-3-125 and 7-3-141 through"; and in definition of authority in (g) substituted "water conservation and flood control district" for "flood control and water conservation district". Amendment effective October 1, 2009.

Cross-References

County Clerk, Title 7, ch. 4, part 26.
County Treasurer, 7-4-3002.
City Clerk, 7-4-4501 through 7-4-4503.
Town Clerk, 7-4-4511 through 7-4-4513.
City Treasurer, 7-4-4701.
Improvement and service districts, Title 7, ch. 12.

7-3-123. Alteration of existing forms of local government. An alteration of an existing form of local government may be proposed by a petition of the electors.

History: En. Sec. 3, Ch. 675, L. 1979.

Cross-References

Local initiatives — generally, Title 7, ch. 5, part 1.

7-3-124. Election procedure. Except as otherwise provided in 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161, each election under 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161 is conducted in the same manner as an election involving ballot issues or an election of local officials.

History: En. Sec. 4, Ch. 675, L. 1979; amd. Sec. 9, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in two places after "7-3-121 through" inserted "7-3-125 and 7-3-141 through"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Ballot issues — local, 7-5-136.

Elections — generally, Title 13.

7-3-125. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of 7-3-142 through 7-3-145.

(2) The petition must be signed by at least 15% of the electors of the local government registered at the last general election, and upon receipt of the petition the governing body shall call an election, as provided for in 7-3-149 through 7-3-151, on the proposed alteration. Whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and 15% of the electors residing in the remainder of the county.

History: En. Sec. 5, Ch. 675, L. 1979.

7-3-126 through 7-3-140 reserved.

7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any form of government authorized by Title 7, chapter 3, parts 1 through 5;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter a municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any form of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter; or

(d) recommend disincorporation.

History: En. Sec. 6, Ch. 675, L. 1979; amd. Sec. 21, Ch. 575, L. 1981; amd. Sec. 2, Ch. 521, L. 2007.

7-3-142. Requirements for petition. A petition proposing an alteration of a local government must contain:

(1) a certificate containing the plan of government of the existing form of local government;

(2) a certificate containing the plan of government of the proposed new form of government or amendments to the existing plan;

(3) a certificate containing the plan of apportionment of commissioner districts if districts are contained in the plan of government; and

(4) a comparison of the existing form of government and plan of government and proposed form of government and plan of government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed forms and plans of government, information that supports the adoption of the proposed form and plan, and information that supports retention of the present form and plan.

History: En. Sec. 7, Ch. 675, L. 1979; amd. Sec. 3, Ch. 521, L. 2007.

Cross-References

Existing form of government — statutory basis, 7-3-111 through 7-3-114.

7-3-143. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is recommended, a petition, in addition to the material required in 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of all existing boards, bureaus, special districts, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries (and may provide a method for adjusting boundaries), or absorb existing boards, bureaus, special districts, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition must contain a certificate containing amendments to the consolidation plan.

History: En. Sec. 8, Ch. 675, L. 1979; amd. Sec. 26, Ch. 697, L. 1983.

Cross-References

Operation of self-government consolidated units of local government, 7-5-201.

7-3-144. Special requirements if county merger recommended. (1) Whenever county merger is recommended, a petition, in addition to the material required by 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

History: En. Sec. 9, Ch. 675, L. 1979.

Cross-References

Change in county boundary — constitutional requirements, Art. XI, sec. 2, Mont. Const.

Abandonment and consolidation of counties, Title 7, ch. 2, part 27.

7-3-145. Special requirements if municipal disincorporation recommended. Whenever municipal disincorporation is recommended, a petition, in addition to the material required by 7-3-142, must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

History: En. Sec. 10, Ch. 675, L. 1979.

Cross-References

Disincorporation of municipalities, Title 7, ch. 2, part 49.

7-3-146. Filing of petitions. (1) Two copies of a petition must be filed with the department of administration.

(2) One copy of a petition must be filed with the local government records administrator.

(3) The filings required by this section must be done within 45 days of submission of the petition.

History: En. Sec. 11, Ch. 675, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 26, Ch. 483, L. 2001.

7-3-147. Availability of petitions. (1) Sufficient copies of a petition proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

History: **En. Sec. 12, Ch. 675, L. 1979.**

7-3-148. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

History: **En. Sec. 13, Ch. 675, L. 1979.**

7-3-149. Election on alteration of form of government. (1) The governing body shall call a special election on the question of an alteration of the form of government or change in a plan of government proposed by petition to be held at the next regular or primary election that is at least 75 days after the call and the date of filing with the records administrator under 7-3-146. The records administrator shall prepare and print notices of the election.

(2) The cost of the election must be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question must be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions must be submitted to the electors in the counties affected and require a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

History: **En. Sec. 14, Ch. 675, L. 1979; amd. Sec. 1, Ch. 214, L. 1983; amd. Sec. 4, Ch. 250, L. 1985; amd. Sec. 8, Ch. 387, L. 1995; amd. Sec. 4, Ch. 521, L. 2007.**

Cross-References

Change in county boundary — separate majorities required, Art. XI, sec. 2, Mont. Const.

Special elections — notice, 13-1-108.

7-3-150. General ballot requirements. (1) The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:

Vote for one:

FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

History: **En. Sec. 15, Ch. 675, L. 1979.**

7-3-151. Treatment of suboptions for proposed alternative forms. (1) A petition recommendation may not involve more than three separate suboptions, and a suboption may not contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.

(2) A proposed change of the form of government or change in a plan of government must be submitted to the voters as a single question, except that the suboptions within the form of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption must be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

To be elected for a term of 4 years.

To be appointed for a term of 4 years by the presiding officer of the local governing body.

History: En. Sec. 16, Ch. 675, L. 1979; amd. Sec. 22, Ch. 575, L. 1981; amd. Sec. 27, Ch. 697, L. 1983; amd. Sec. 292, Ch. 61, L. 2007; amd. Sec. 5, Ch. 521, L. 2007.

7-3-152. Effect of adoption of new form of government or change in plan of government. The adoption of a new form of government or a change in a plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: En. Sec. 17, Ch. 675, L. 1979; amd. Sec. 6, Ch. 521, L. 2007.

Cross-References

Effect of change in government, 7-3-106.

7-3-153. Filing of approved plan. (1) A copy of the new form of government or change in a plan of government that is proposed by petition and that is ratified by the voters and any apportionment plan or consolidation or merger plan must be certified by the presiding officer of the governing body and filed with the department of administration, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved form of government or change in a plan of government filed with the department of administration is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

History: En. Sec. 18, Ch. 675, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 27, Ch. 483, L. 2001; amd. Sec. 7, Ch. 521, L. 2007.

Cross-References

Right to examine public documents, Art. II, sec. 9, Mont. Const.

7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: En. Sec. 19, Ch. 675, L. 1979; amd. Sec. 10, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in second sentence after "7-3-121 through" inserted "7-3-125 and 7-3-141 through". Amendment effective October 1, 2009.

Cross-References

Conclusive presumptions — effect, 26-1-601; Rule 301, M.R.Ev. (see Title 26, ch. 10).

7-3-155. Three-year moratorium. (1) Unless the constitution requires otherwise, the electors of any unit of local government that has voted upon the question of changing the form of local government, charter, or consolidation plan may not vote on the question of changing the form of local government for 3 years.

(2) For the purposes of this section, general election dates are considered to be 1 year apart and may be used in computing the 3-year moratorium. An election on the question of changing an alternative form of a unit of local government may not be challenged as failing to conform with the moratorium provisions of this section because 3 full calendar years may not have elapsed.

History: En. Sec. 20, Ch. 675, L. 1979; amd. Sec. 1, Ch. 404, L. 1983; amd. Sec. 8, Ch. 521, L. 2007.

Cross-References

Constitutional provision on review of local governments — 10-year period, Art. XI, sec. 9, Mont. Const.
Limitation on change in alternative form, 7-3-104.

7-3-156. Effective date of alternative form or amendment — officers. (1) A change in form of government or plan of government approved by the electors takes effect when the new officers take office pursuant to 7-3-161, except as otherwise provided in any charter or transition plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

(3) An amendment to the plan of an existing form of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared unless the plan provides for an increase in the number or type of elective officers, in which case the amendment takes effect when the new officers take office.

History: En. Sec. 21, Ch. 675, L. 1979; amd. Sec. 9, Ch. 521, L. 2007.

Cross-References

Effective date of change of local government, 7-3-103.
Start of county officer's term of office, 7-4-2205.
Start of municipal officer's term of office, 7-4-4107.

7-3-157. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new form of government or plan of government proposed by petition. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new form of government or plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition that is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

History: En. Sec. 22, Ch. 675, L. 1979; amd. Sec. 10, Ch. 521, L. 2007.

Cross-References

Effect of change in government, 7-3-106.

7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified.

(2) An officer, including a member of the governing body, elected under an existing form of government or plan of government continues to hold office under a new form of government or change to a plan of government if the new form or plan continues to have that office, whether the new officer is to be elected or appointed. A successor may be elected or appointed, as appropriate, to fill the office at the end of the term for which the holdover officer was elected.

(3) All other employees holding offices or positions under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(4) A change in a form of government or a plan of government may provide that existing elected officers of an office that is abolished may continue in office until the end of the term for which they were elected or may provide that the existing elected officers be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced.

History: **En. Sec. 23, Ch. 675, L. 1979; amd. Sec. 23, Ch. 575, L. 1981; amd. Sec. 11, Ch. 521, L. 2007.**

7-3-159. Treatment of existing ordinances and resolutions. (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: **En. Sec. 24, Ch. 675, L. 1979.**

Cross-References

Effect of change in government, 7-3-106.

7-3-160. Election of new officials. (1) Within 20 days after an election at which a new form of government or change in a plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form or plan of government. The elections for officials must be held in conjunction with any other election of that government.

(2) The order must specify:

(a) a date for the primary election to be held no later than the government's next regularly scheduled primary election; and

(b) a date for the general election to be held no later than the next regularly scheduled city or county general election following the primary election date established under subsection (2)(a).

History: **En. Sec. 25, Ch. 675, L. 1979; amd. Sec. 5, Ch. 250, L. 1985; amd. Sec. 1, Ch. 8, Sp. L. March 1986; amd. Sec. 12, Ch. 521, L. 2007.**

Cross-References

Times for holding general elections, 13-1-104.
Times for holding primary elections, 13-1-107.
Special elections — notice, 13-1-108.

7-3-161. Organization of new governing body. (1) The first meeting of a new governing body for a different form of government must be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected officers shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, newly elected commissioners shall draw lots to establish their respective terms of office.

History: **En. Sec. 26, Ch. 675, L. 1979; amd. Sec. 13, Ch. 521, L. 2007.**

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 7-4-101.

7-3-162 through 7-3-170 reserved.

7-3-171. Purpose. The purpose of 7-3-171 through 7-3-193 is to provide a mechanism for local government review as required by Article XI, section 9, of the Montana constitution.

History: **En. Sec. 1, Ch. 697, L. 1983.**

7-3-172. Purpose of study commission. The purpose of a study commission is to study the existing form and powers of a local government and procedures for delivery of local government services and compare them with other forms available under the laws of the state.

History: **En. Sec. 2, Ch. 697, L. 1983.**

7-3-173. Establishment of study commissions. (1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission must be held:

(a) whenever the governing body of the local government unit calls for an election by resolution;

(b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission, as required by Article XI, section 9(2), of the Montana constitution, within 1 year after the 10-year period referred to in subsection (1)(c).

History: En. Sec. 3, Ch. 697, L. 1983; amd. Sec. 11, Ch. 130, L. 2005.

7-3-174. Election procedures. (1) Votes cast on the question of establishing a study commission and for electing study commission members shall be counted, canvassed, and returned as provided in Title 13 for general elections.

(2) The election administrator shall report the results of all elections conducted under 7-3-171 through 7-3-193 to the secretary of state within 15 days of the date the results become official.

History: En. Sec. 4, Ch. 697, L. 1983.

7-3-175. Election on question of establishing study commission. (1) The question of conducting a local government review and establishing a study commission must be submitted to the electors in substantially the following form:

Vote for one:

> FOR the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.
>
> AGAINST the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.

(2) The question of conducting a local government review and establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

(3) Except for elections to be conducted pursuant to 7-3-173(2), a special election on the question of reviewing a local government and establishing a study commission must be held no sooner than 60 days and no later than 90 days after the passage of a resolution or the certification of a petition calling for an election on the question.

History: En. Sec. 5, Ch. 697, L. 1983; amd. Sec. 14, Ch. 521, L. 2007.

7-3-176. Election of commission members. (1) If the question of reviewing the local government and establishing a study commission is approved, an election to fill the positions on the local government study commission must be held in conjunction with the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than 75 days before the date of the election must be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates must be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissioners.

(3) Candidates for study commission positions must be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes, which includes votes cast for candidates who have officially filed nominations and votes for write-in candidates, must be declared elected. If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the presiding officer of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. An elected official of the local government may not be appointed.

History: En. Sec. 6, Ch. 697, L. 1983; amd. Sec. 6, Ch. 250, L. 1985; amd. Sec. 1, Ch. 435, L. 1985; amd. Sec. 9, Ch. 387, L. 1995.

7-3-177. Composition of study commission. (1) The number of positions, which must be an odd number of not less than three, on the study commission shall be set out in the resolution or petition calling for the election on the question of reviewing the local government or local governments and establishing a study commission. If the election is called under the provisions of 7-3-173(1)(c), the study commission shall consist of three members unless the local governing body by resolution declares that a larger number shall be elected.

(2) Every study commission shall include as an ex officio nonvoting member a member of the governing body or an elected official or employee of the local government appointed by the governing body. The ex officio member must be appointed prior to the organization of the study commission provided for in 7-3-179.

History: En. Sec. 7, Ch. 697, L. 1983; amd. Sec. 2, Ch. 435, L. 1985.

7-3-178. Term of office — vacancies — compensation. (1) The term of office of study commission members begins on the day that their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with 7-3-187.

(2) Except as provided in subsection (1), the term of office of study commission members terminates on the date of the first statewide general election following the election required by 7-3-176.

(3) A vacancy on a study commission, including an ex officio member vacancy, must be determined in the same manner as a vacancy in municipal office as provided in 7-4-4111. A vacancy on a study commission must be filled by appointment by the governing body of the local government being studied by the commission. The appointment must be made within 30 days of the date the vacancy occurs.

(4) Members of the study commission may not receive compensation other than for actual and necessary expenses incurred in their official capacity.

History: En. Secs. 8, 9, 10, Ch. 697, L. 1983; amd. Sec. 3, Ch. 435, L. 1985; amd. Sec. 15, Ch. 521, L. 2007.

7-3-179. Organization of commission. (1) Not later than 10 days after all members of the study commission have been elected or appointed, the study commission shall meet and organize at a time set by the presiding officer of the governing body of the local government that the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary presiding officer, who will serve until a permanent presiding officer is selected.

History: En. Sec. 11, Ch. 697, L. 1983; amd. Sec. 293, Ch. 61, L. 2007.

7-3-180. Cooperation of study commissions. (1) Any two or more study commissions may cooperate in the conduct of their studies. A majority vote by each of the affected study commissions is required for a cooperative study.

(2) Cooperative studies do not preclude each study commission from making a separate report and recommendation.

History: En. Sec. 12, Ch. 697, L. 1983.

7-3-181. Conduct of business. (1) Meetings of the study commission must be held upon the call of the presiding officer, the vice presiding officer in the absence or inability of the presiding officer, or a majority of the members. The presiding officer shall announce the time and place of the meetings of the study commission.

(2) The study commission shall maintain a written record of its proceedings and its finances. This record is open to inspection by a person at the office of the study commission during the office hours determined by the governing body by resolution after a public hearing and only if consented to by the presiding officer.

(3) A majority of the members of the study commission constitutes a quorum for the transaction of business, but a recommendation of a study commission does not have legal effect unless adopted by a majority of the whole number of members of the study commission.

(4) The study commission may adopt rules for its own organization and procedure.

History: En. Sec. 13, Ch. 697, L. 1983; amd. Sec. 1, Ch. 216, L. 1995.

7-3-182. Open meetings and public involvement. All meetings of the study commission are open to the public as provided in Title 2, chapter 3, part 2. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information, receive suggestions and comments, and stimulate public discussion of its purpose, progress, conclusions, and recommendations.

History: En. Sec. 14, Ch. 697, L. 1983.

7-3-183. Commission powers. (1) A study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they may receive no other compensation from the study commission except mileage and per diem.

(2) A study commission may contract and cooperate with other agencies, public or private, that it considers necessary for assistance in carrying out the purposes for which the commission was established. Upon request of the presiding officer of the study commission, state agencies, counties, and other local governments and the officers and employees of those entities shall furnish or make available to the commission information that may be necessary for carrying out the commission's function.

(3) A study commission may:

(a) establish advisory boards and committees, including on them persons who are not members of the study commission;

(b) retain consultants; and

(c) do any other act consistent with and reasonably required to perform its function.

History: En. Sec. 15, Ch. 697, L. 1983; amd. Sec. 294, Ch. 61, L. 2007.

7-3-184. Financial administration. (1) A study commission shall prepare a budget for each fiscal year that it is in existence and shall submit it to the local governing body for approval.

(2) (a) For the support of the study commission, for each fiscal year that the study commission is in existence, each local government under study shall appropriate an amount necessary to fund the study, and the local government may levy mills in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation provision of subsection (2)(a).

(c) The local government may provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission must be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study

commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government.

History: **En. Sec. 16, Ch. 697, L. 1983; amd. Sec. 1, Ch. 395, L. 1991; amd. Sec. 7, Ch. 584, L. 1999; amd. Sec. 16, Ch. 521, L. 2007.**

7-3-185. Scope of study commission recommendations. (1) (a) A study commission examining the government of a county may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation or amendments to an existing consolidation;

(v) in cooperation with a study commission in an adjoining county, recommend county merger; or

(vi) submit no recommendation.

(b) In addition to one of the items in subsection (1)(a), a county study commission may recommend service consolidation or transfer in cooperation with a study commission of another county or with a study commission of one or more municipalities.

(2) (a) A study commission examining the government of a municipality may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation;

(v) recommend disincorporation; or

(vi) submit no recommendation.

(b) In addition to one of the items in subsection (2)(a), a municipal study commission may recommend service consolidation or transfer in cooperation with:

(i) a county study commission;

(ii) a county study commission and one or more municipal study commissions; or

(iii) one or more municipal study commissions.

History: **En. Sec. 17, Ch. 697, L. 1983; amd. Sec. 4, Ch. 435, L. 1985.**

7-3-186. Study commission timetable. (1) Each local government study commission shall, within 90 days of its organizational meeting, establish a timetable for its deliberations and actions. The timetable must be published in a local newspaper of general circulation. The timetable may be revised, but each revision must be republished.

(2) The timetable must provide, at a minimum, the following provisions, to be accomplished chronologically in the order presented:

(a) conduct one or more public hearings for the purpose of gathering information regarding the current form, functions, and problems of local government;

(b) formulate, reproduce, and distribute a tentative report, containing the same categories of information required to be included in the final report;

(c) conduct one or more public hearings on the tentative report;

(d) adopt the final report of the commission and set the date for a special election on the question of adopting a new plan of government or, if the study commission is not recommending any changes, publish and distribute the final report as provided in 7-3-187 within 60 days after the final report is adopted. The special election must be held in conjunction with a regular or primary election.

History: **En. Sec. 18, Ch. 697, L. 1983; amd. Sec. 10, Ch. 387, L. 1995.**

7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an alteration of a local government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of a local government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form of government or change in a plan of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of administration, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative form or plan of government. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder.

History: En. Sec. 19, Ch. 697, L. 1983; amd. Sec. 5, Ch. 435, L. 1985; amd. Sec. 11, Ch. 387, L. 1995; amd. Sec. 28, Ch. 483, L. 2001; amd. Sec. 17, Ch. 521, L. 2007.

7-3-188. Special final report requirements — consolidation or county merger. (1) Consolidation or merger may be placed on the ballot only by a joint report by cooperative study commissions.

(2) A final report, in addition to the material required in 7-3-187, must contain a consolidation plan if county-municipal consolidation or county merger is recommended. The consolidation plan must conform to the provisions and requirements relating to petitions in:

(a) 7-3-143 whenever county-municipal consolidation is recommended; or

(b) 7-3-144 whenever county merger is recommended.

History: En. Sec. 20, Ch. 697, L. 1983.

7-3-189. Special final report requirements for disincorporation. If a study commission proposes municipal disincorporation, the final report shall contain the following additional material and documents:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

History: En. Sec. 21, Ch. 697, L. 1983.

7-3-190. Supplementary reports. A study commission may prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and indicate potential areas for interlocal agreements. Such reports shall be submitted to all appropriate governing bodies for reaction within 1 year.

History: En. Sec. 22, Ch. 697, L. 1983; amd. Sec. 6, Ch. 435, L. 1985.

7-3-191. Publication of summary. Each study commission shall publish once each week for 2 successive weeks in a newspaper of general circulation throughout the area of the affected local government a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government.

History: En. Sec. 23, Ch. 697, L. 1983.

7-3-192. Election on recommendation. (1) An alternative form or plan of government recommended by a study commission must be submitted to the voters as provided in 7-3-149. The election must be held in conjunction with any regularly scheduled election.

(2) General ballot requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.

History: En. Sec. 24, Ch. 697, L. 1983; amd. Sec. 7, Ch. 250, L. 1985; amd. Sec. 12, Ch. 387, L. 1995; amd. Sec. 18, Ch. 521, L. 2007.

7-3-193. Application of other sections. (1) Except as provided in subsection (2) of this section, the provisions of 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative form or plan of government upon recommendation by a study commission.

(2) (a) The presiding officer of the study commission and not the presiding officer of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new form or plan of government under 7-3-157.

(c) A study commission plan may provide for existing elected officers under 7-3-158(4).

History: En. Sec. 25, Ch. 697, L. 1983; amd. Sec. 295, Ch. 61, L. 2007; amd. Sec. 19, Ch. 521, L. 2007.

Part 2
Commission-Executive Government

Part Cross-References

Statutory basis for "existing" municipal council-mayor government, 7-3-113.
Strong mayor municipal government, Title 7, ch. 3, part 41.
Municipal commission government, Title 7, ch. 3, part 42.

7-3-201. Commission-executive form. The commission-executive form (which may be called the council-executive, the council-mayor, or the commission-mayor form) consists of an elected commission (which may be referred to as the council) and one elected executive (who may be referred to as the mayor) who is elected at large.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(1).

7-3-202. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(4).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties); 7-1-4124 (municipalities).
Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-203. Duties of executive. The executive shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform duties required by law, ordinance, or resolution;

(3) administer affairs of the local government;

(4) carry out policies established by the commission;

(5) recommend measures to the commission;

(6) report to the commission on the affairs and financial condition of the local government;

(7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(8) report to the commission as the commission may require;

(9) attend commission meetings and may take part in discussions;

(10) execute the budget adopted by the commission; and

(11) appoint, with the consent of the commission, all members of boards, except the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(2); amd. Sec. 296, Ch. 61, L. 2007.

7-3-204 through 7-3-210 reserved.

7-3-211. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-212 through 7-3-224.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(part).

7-3-212. Administrative assistants. The executive:

(1) shall appoint one or more administrative assistants to assist in the supervision and operation of the local government, and the administrative assistants are answerable solely to the executive; or

(2) may appoint one or more administrative assistants to assist in the supervision and operation of the local government, and the administrative assistants are answerable solely to the executive.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(a); amd. Sec. 297, Ch. 61, L. 2007.

7-3-213. Supervision of personnel. The executive may:

(1) appoint and remove all employees of the local government;

(2) appoint and remove, with the consent of a majority of the commission, all employees of the local government;

(3) appoint, with the consent of a majority of the commission, all department heads and remove department heads and may appoint and remove all other department employees; or

(4) appoint and remove, with the consent of a majority of the commission, all department heads and appoint and remove all other employees of the local government.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(b).

7-3-214. Veto power. The executive may:

(1) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission;

(2) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(3) sign all ordinances and resolutions with no veto power.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(c).

7-3-215. Preparation of budget. The executive may:

(1) prepare the budget and present it to the commission for adoption; or

(2) prepare the budget in consultation with the commission and department heads.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(d).

7-3-216. Administrative supervision and control. The executive may:

(1) exercise control and supervision of the administration of all departments and boards; or

(2) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(e).

7-3-217. Financial officer. A financial officer (who may be called the treasurer):

(1) shall be elected;

(2) shall be appointed by the executive with the consent of the council;

(3) shall be selected as provided by ordinance; or

(4) may, at the discretion of the commission, be selected as provided by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(f).

7-3-218. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(g).

7-3-219. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(h); amd. Sec. 3, Ch. 79, L. 1983.**

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-220. Presiding officer of commission. The commission must have a presiding officer who must be:

(1) elected by the members of the commission from their own number for a term established by ordinance; or

(2) selected as provided by ordinance.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(i); amd. Sec. 298, Ch. 61, L. 2007.**

7-3-221. Presiding officer of commission. The presiding officer of the commission:

(1) may vote as other members of the commission;

(2) is the executive, who may vote as the commissioners;

(3) is the executive, who shall decide all tie votes of the commission but may not have another vote (the presiding officer of the commission shall preside if the executive is absent); or

(4) is the executive but may not vote.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(j); amd. Sec. 299, Ch. 61, L. 2007.**

7-3-222. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(k).**

7-3-223. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(l).**

7-3-224. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(m).**

Cross-References

Transition of elected officials, 7-3-158.

Part 3
Commission-Manager Government

Part Cross-References

Municipal commission-manager government, Title 7, ch. 3, parts 43 and 44.

7-3-301. Commission-manager form. The commission-manager form, which may be called the council-manager form, consists of an elected commission, which may be called the council, and a manager appointed by the commission, who is the chief administrative officer of the local government. The manager is responsible to the commission for the administration of all local government affairs placed in the manager's charge by law, ordinance, or resolution.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(1); amd. Sec. 300, Ch. 61, L. 2007.**

7-3-302. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(7).**

7-3-303. Appointment of manager. The manager shall be appointed by the commission for an indefinite term on the basis of merit only and removed only by a majority vote of the whole number of the commission.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(2).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties); 7-1-4124 (municipalities).

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-304. Duties of manager. The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare the commission agenda;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion but may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part); amd. Sec. 301, Ch. 61, L. 2007.

7-3-305. Employees of commission-manager government. (1) Employees appointed by the manager and the manager's subordinates must be administratively responsible to the manager.

(2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of the manager's subordinates are empowered to appoint.

(3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to the employee, either publicly or privately.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part); amd. Sec. 302, Ch. 61, L. 2007.

7-3-306 through 7-3-310 reserved.

7-3-311. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-312 through 7-3-318.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).

7-3-312. Appointment to boards. All members of boards, other than temporary advisory committees established by the manager, must be appointed by:

(1) the presiding officer with the consent of the commission;

(2) the manager with the consent of the commission; or

(3) the commission.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(a); amd. Sec. 303, Ch. 61, L. 2007.

7-3-313. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(b).

7-3-314. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(c); amd. Sec. 4, Ch. 79, L. 1983.

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-315. Presiding officer of commission. The presiding officer of the commission must be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) elected by the qualified electors for a term of office; or

(3) selected as provided by ordinance.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(d); amd. Sec. 304, Ch. 61, L. 2007.

7-3-316. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(e).

7-3-317. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(f).

7-3-318. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(g).

Cross-References

Transition of elected officials, 7-3-158.

Part 4
Commission Government

Part Cross-References

Constitutional recognition of County Commission form of government, Art. XI, sec. 3(2), Mont. Const.

Statutory basis for "existing" elected county official government, 7-3-111.

7-3-401. Commission form. The commission form consists of an elected commission (which may also be called the council) and other elected officers as provided in this part. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(1).**

7-3-402. Nature of government. Local governments that adopt this form shall have general government powers.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(4).**

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties); 7-1-4124 (municipalities).

7-3-403. Role of presiding officer of commission. The presiding officer of the commission may be referred to as the mayor. All members of boards and committees must be appointed by the presiding officer with the consent of the commission. The presiding officer must be recognized as the head of the local government unit and may vote as other members of the commission.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part); amd. Sec. 305, Ch. 61, L. 2007.**

7-3-404 through 7-3-410 reserved.

7-3-411. General structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-412 through 7-3-418.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).**

7-3-412. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(a).**

7-3-413. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(b); amd. Sec. 5, Ch. 79, L. 1983.**

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-414. Presiding officer of commission. The presiding officer of the commission must be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) selected as provided by ordinance; or

(3) elected directly by the voters for a term established by ordinance.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part); amd. Sec. 306, Ch. 61, L. 2007.**

7-3-415. Administrative assistants. The commission:

(1) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(2) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(d).**

7-3-416. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(e).

7-3-417. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(f).

7-3-418. Terms of elected officials. The term of office of elected officials may not exceed 4 years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3(2), of the Montana constitution may not exceed 6 years. Terms of office shall be established when the form is adopted by the voters.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(g).

7-3-419 through 7-3-430 reserved.

7-3-431. Additional structural suboptions for county and consolidated governments. In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-432 through 7-3-442. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-432. Legal officer. A legal officer, who may be called the county attorney:

(1) may be elected;

(2) may be appointed by the local government commission;

(3) may be appointed by the presiding officer of the local government commission;

(4) may be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(a); amd. Sec. 307, Ch. 61, L. 2007.

7-3-433. Law enforcement officer. A law enforcement officer, who may be called the sheriff:

(1) may be elected;

(2) may be appointed by the local government commission;

(3) may be appointed by the presiding officer of the local government commission;

(4) may be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(b); amd. Sec. 308, Ch. 61, L. 2007.

7-3-434. Clerk and recorder. A clerk and recorder:

(1) may be elected;

(2) may be appointed by the local government commission;

(3) may be appointed by the presiding officer of the local government commission;

(4) may be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(c); amd. Sec. 309, Ch. 61, L. 2007.

7-3-435. Clerk of district court. A clerk of district court:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(d); amd. Sec. 310, Ch. 61, L. 2007.

7-3-436. Treasurer. A treasurer:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(e); amd. Sec. 311, Ch. 61, L. 2007.

7-3-437. Surveyor. A surveyor:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(f); amd. Sec. 312, Ch. 61, L. 2007.

7-3-438. Superintendent of schools. A superintendent of schools:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(g); amd. Sec. 313, Ch. 61, L. 2007.

7-3-439. Assessor. An assessor:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(h); amd. Sec. 314, Ch. 61, L. 2007.

7-3-440. Coroner. A coroner:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(i); amd. Sec. 315, Ch. 61, L. 2007.

7-3-441. Public administrator. A public administrator:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(j); amd. Sec. 316, Ch. 61, L. 2007.

7-3-442. Auditor. An auditor:
(1) may be elected;
(2) may be appointed by the local government commission;
(3) may be appointed by the presiding officer of the local government commission;
(4) may be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) may not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(k); amd. Sec. 317, Ch. 61, L. 2007.

Part 5
Commission-Presiding Officer Government

7-3-501. Commission-presiding officer form. The commission-presiding officer form consists of an elected commission, which may also be referred to as the council, and a commission presiding officer, who may also be referred to as mayor or as president, elected by the members of the commission from their own number and serving at the pleasure of the commission.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part); amd. Sec. 318, Ch. 61, L. 2007.

7-3-502. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:
(1) general government powers; or
(2) self-government powers.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(4).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties); 7-1-4124 (municipalities).
Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-503. Role and duties of presiding officer. The commission presiding officer:

(1) must be recognized as the head of the local government unit, must have the power to vote as other members of the commission, and must be the chief executive officer of the local government;
(2) shall enforce laws, ordinances, and resolutions;
(3) shall perform duties required by law, ordinance, or resolution;
(4) shall administer the affairs of the local government;
(5) shall direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;
(6) shall carry out policies established by the commission;
(7) shall prepare the commission agenda;
(8) shall recommend measures to the commission;
(9) shall report to the commission on the affairs and financial condition of the local government;
(10) shall execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
(11) shall report to the commission as the commission may require;
(12) shall attend commission meetings and may take part in discussions;
(13) shall execute the budget adopted by the commission;

(14) shall appoint, with the consent of the commission, all members of boards and committees. However, the presiding officer may appoint without the consent of the commission temporary advisory committees.

(15) shall appoint, with the consent of a majority of the commission, all department heads, and the presiding officer may remove department heads and may appoint and remove all other employees;

(16) shall prepare the budget and present it to the commission for adoption; and

(17) shall exercise control and supervision over the administration of departments and boards.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part); amd. Sec. 319, Ch. 61, L. 2007.

7-3-504 through 7-3-510 reserved.

7-3-511. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-512 through 7-3-517.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-512. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(a).

7-3-513. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(b); amd. Sec. 6, Ch. 79, L. 1983.

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-514. Administrative assistants. The commission presiding officer:

(1) shall appoint one or more administrative assistants to assist in the supervision and operation of the local government, and the administrative assistants are answerable solely to the presiding officer; or

(2) may appoint one or more administrative assistants to assist in the supervision and operation of the local government, and the administrative assistants are answerable solely to the presiding officer.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(c); amd. Sec. 320, Ch. 61, L. 2007.

7-3-515. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(d).

7-3-516. Size of commission and community councils. The size of the commission, which shall be a number not less than five, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(e).

7-3-517. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(f).

Cross-References

Transition of elected officials, 7-3-158.

Part 6
Town Meeting Government

7-3-601. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town, known as a "town meeting", an elected town presiding officer, who must be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities of less than 2,000 persons and incorporated towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants is made by the state, in which case that enumeration must be used for the purposes of this part. A unit of local government that adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(1), (2); amd. Sec. 1, Ch. 275, L. 1987; amd. Sec. 321, Ch. 61, L. 2007.

Cross-References

Qualified electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

Legislative powers, 7-1-4123.

7-3-602. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(11).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-4124.

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-603. Holding of town meeting. (1) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town presiding officer or upon petition of 10% of the qualified electors of the town, but not by less than 10 qualified electors.

(2) All qualified electors of the town may attend the town meeting, take part in the discussion, and vote on all matters coming before the town meeting. Others may attend but may not vote or take part in the discussion except by a majority vote of the town meeting.

(3) A quorum consists of at least 10% of the qualified electors of the town, but a higher quorum requirement may be established by a majority vote of the town meeting.

(4) The election of town officials must be nonpartisan and must be by a plurality of those qualified electors present and voting. All other voting in the town meeting must be by a simple majority of those qualified electors present and voting.

(5) Election of officials must be by secret ballot. Other voting must be by secret ballot upon the request of at least five members of the town meeting.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(3); amd. Sec. 322, Ch. 61, L. 2007.

7-3-604. Meeting agenda. An agenda of the town meeting and a list of all elective and appointive offices to be filled must be prepared by the town presiding officer, who shall publish the notice as provided in 7-1-4127. Upon written petition of at least 10% of the qualified electors of the town but not less than 10 qualified electors, the town presiding officer shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting, except any matter dealing with finance or taxation may not be considered under "other business".

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(4); amd. Sec. 11, Ch. 354, L. 2001.

Cross-References

Posting notice, 7-1-4135.

7-3-605. Agenda and conduct of initial town meeting. The first agenda of the first town meeting following the adoption of this form must be established by the local study commission. At that town meeting the presiding officer of the local study commission shall preside over the election of the presiding officer of the town, after which the presiding officer of the town shall preside.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(10); amd. Sec. 323, Ch. 61, L. 2007.

7-3-606. Selection, role, and duties of town presiding officer. (1) The town meeting shall elect a town presiding officer for a term of not less than 1 year or more than 2 years. An unexpired term of a town presiding officer must be filled at the next annual or special town meeting.

(2) The town presiding officer is the chief executive officer of the town and shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards; and

(l) carry out policies established by the town meeting.

(3) Compensation of the town presiding officer must be established by ordinance but may not be reduced during the current term of the town presiding officer.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(5) thru (7); amd. Sec. 324, Ch. 61, L. 2007.

7-3-607. Committees. Permanent committees to advise the town presiding officer or the town meeting may be established and dissolved by ordinance. The town presiding officer may establish temporary committees to advise the presiding officer.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(8); amd. Sec. 325, Ch. 61, L. 2007.

7-3-608 through 7-3-610 reserved.

7-3-611. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-612 and 7-3-613.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(part).

7-3-612. Town meeting moderator. The town meeting shall:

(1) elect a town meeting moderator for a term of 1 year, who is the presiding officer of all annual and special town meetings but who does not have other governmental powers; or

(2) designate the town presiding officer as presiding officer of all annual and special town meetings.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(a); amd. Sec. 326, Ch. 61, L. 2007.**

7-3-613. Administrative assistant. (1) The town presiding officer:

(a) shall appoint an administrative assistant to assist in the supervision and operation of the affairs of the town; or

(b) may appoint an administrative assistant to assist in the supervision and operation of the affairs of the town.

(2) The administrative assistant is answerable solely to the town presiding officer, and the town presiding officer may delegate powers to the administrative assistant.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(b); amd. Sec. 327, Ch. 61, L. 2007.**

Part 7
Charter Government

7-3-701. Charter form. (1) The purpose of this part is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(1), (2).**

7-3-702. Nature of government. A charter form of government shall possess self-government powers.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(3).**

Cross-References

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-703. Charter required. (1) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(2) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(4), (13).**

Cross-References

Constitutional grant of powers, Art. XI, sec. 6, Mont. Const.

7-3-704. Legislative body. (1) The charter shall provide for an elected legislative body (called a commission or council) or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies, the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(2) The charter shall provide for the nomination and election of commissions:

(a) at large;

(b) by districts in which candidates must reside and which are apportioned by population;

(c) by a combination of districts, in which candidates must reside and which are apportioned by population, and at large; or

(d) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(5), (6).**

Cross-References

Legislative powers — general powers government, 7-1-4123.

Nonpartisan elections, Title 13, ch. 14.

7-3-705. Officials and personnel. (1) The charter must specify which official of the local government will be the chief administrative and executive officer, the method of the officer's selection, the term of office (except that it may be at the pleasure of the selecting authority if the officer is not elected by popular vote), the grounds for the officer's removal, and the officer's powers and duties. However, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as provided in this section, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(2) A charter form of government must have the officers, departments, boards, commissions, and agencies that are established in the charter, by local ordinance, or required by state law.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(7), (9); amd. Sec. 328, Ch. 61, L. 2007.**

Cross-References

Functions regulated by state law, 7-1-114.

7-3-706. Effective date. The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(16).**

Cross-References

Transition provisions, 7-3-158.

7-3-707. Other charter provisions. (1) The charter may establish other legislative, administrative, and organizational structures.

(2) The charter may contain prohibitions on the exercise of power by a unit of local government.

(3) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(4) The listing of charter provisions in this part shall not be construed to prevent the inclusion of additional provisions in charters.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(8), (14), (15), (17).**

7-3-708. Limitations on charter provisions. (1) Charter provisions may not conflict with the provisions of part 1, chapter 1, which establish statutory limitations on the powers of self-government units.

(2) Charter forms are subject to state laws establishing election, initiative, and referendum procedures; and charters shall not contain provisions establishing election, initiative, and referendum procedures.

(3) The charter shall not contain provisions establishing or modifying local court systems.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(10) thru (12).**

Cross-References

Local court systems, Title 3, ch. 6 (Municipal Courts); Title 3, ch. 10 (Justices' Courts); Title 3, ch. 11 (City Courts).

Initiative and referendum, Title 7, ch. 5, part 1.

Election provisions, Title 13.

7-3-709. Amendment of charter. A charter may be amended only as provided by state law.

History: **En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(18).**

Cross-References

Amendment of charter, 7-3-103.

Parts 8 through 10 reserved

Part 11
City-County Consolidation — Option 1

Part Cross-References

Disincorporation of municipalities, Title 7, ch. 2, part 49.
Special requirements for proposal of consolidation, 7-3-143.
Operational status of self-government city-county consolidated local governments, 7-5-201.

7-3-1101. City-county consolidation authorized. (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this part.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by those study commissions that have cooperated in the formulation of the plan. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission by a majority vote approves the proposed alternative plan for the consolidated government.

(4) This part shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part); amd. Sec. 2, Ch. 262, L. 1979.

Cross-References

Vote requirements for consolidation, 7-3-149.
Town meeting form not applicable to counties, 7-3-601.

7-3-1102. Plan of consolidation. (1) Study commissions proposing consolidation shall prepare, adopt, and submit to the voters a consolidation plan in addition to the alternative form of government. If the commission proposes a charter, the plan may be included in the charter.

(2) The consolidation plan shall:

(a) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(b) provide for establishment of service areas;

(c) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form;

(d) provide the official name of the consolidated unit of local government;

(e) provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries (and may provide a method for adjusting the boundaries) of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments;

(f) include other provisions which the study commission elects to include and which are consistent with state law.

(3) The plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish, or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part).

7-3-1103. Effect of consolidation. (1) As a political subdivision of the state, such consolidated unit of local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

(2) On its effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date, the separate corporate existence of the county and of each

participating city and/or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this chapter. The consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns so consolidated and merged.

(3) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a consolidated local government.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(5), (8).

7-3-1104. General powers of consolidated local governments. A consolidated local government has and may exercise all powers that are conferred on counties, cities, or towns by the constitution and laws of the state. Subject to 15-10-420, the consolidated local government may levy all taxes that counties, cities, and towns are authorized to levy.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(6); amd. Sec. 8, Ch. 584, L. 1999.

7-3-1105. Rules, ordinances, and resolutions of consolidated unit. (1) Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation must remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(2) (a) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the defined boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.

(b) The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(7); amd. Sec. 3, Ch. 466, L. 2003; amd. Sec. 1, Ch. 261, L. 2005.

Part 12
City-County Consolidation — Option 2

Part Cross-References

Operational status of self-government city-county consolidated local governments, 7-5-201.

7-3-1201. Authorization for consolidated city-county government. The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this part and part 13 by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 121, L. 1923; re-en. Sec. 5520.1, R.C.M. 1935; R.C.M. 1947, 11-3401.

7-3-1202. Nature of consolidated government. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislature, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part).

7-3-1203. General powers of consolidated government. (1) The inhabitants of every consolidated municipality organized under the provisions of this part and part 13, as its limits are at the time of such organization or as they may be thereafter established as provided by law, shall be a body politic and corporate under the designation and name as adopted at the election providing for such consolidation and merging and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, appropriation, lease, or lease with privilege of purchase and may sell, lease, hold, manage, and control such property as the interest of the municipality may require; may levy and collect such taxes as are authorized by this part or part 13 or by the general laws of the state; and except as otherwise provided in this part and part 13, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities, and towns by the laws of this state.

(2) All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this part and part 13 or in the general laws of the state or, when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

History: En. Sec. 6, Ch. 121, L. 1923; re-en. Sec. 5520.6, R.C.M. 1935; R.C.M. 1947, 11-3406.

Cross-References

General powers — local government units, Art. XI, sec. 4, Mont. Const.

7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each city and town therein and the consolidation and merging of the existence and government of the county and each of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the registered electors of the county if a petition is filed in the office of the election administrator of the county, signed by at least 20% of the electors of the county whose names appear on the official register of voters of the county on the date of the filing of the petition, requesting that such question be submitted to the registered electors of the county.

(2) The petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in 7-5-132 through 7-5-137 for initiative and referendum petitions and shall designate therein the name by which the consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein.

History: (1)En. Sec. 2, Ch. 121, L. 1923; re-en. Sec. 5520.2, R.C.M. 1935; Sec. 11-3402, R.C.M. 1947; (2)En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; Sec. 11-3403, R.C.M. 1947; R.C.M. 1947, 11-3402, 11-3403(part); amd. Sec. 3, Ch. 262, L. 1979; amd. Sec. 381, Ch. 571, L. 1979.

Cross-References

List of registered voters, 13-2-115, 13-2-122.

7-3-1205. Certification of petition — board action. (1) If the county election administrator finds that the petition or amended petition is signed by the required number of registered electors, the election administrator shall certify the finding to the board of county commissioners at their next regular meeting.

(2) The board shall, within 10 days after receiving the election administrator's certificate, order a special election to be held on the question. The order must specify that the election will be held in conjunction with the next regular or primary election. The board of county commissioners shall issue a proclamation setting forth the purpose for which the special election is held and the date of holding the election. The proclamation must be published in the manner prescribed by 13-1-108.

History: En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; R.C.M. 1947, 11-3403(part); amd. Sec. 382, Ch. 571, L. 1979; amd. Sec. 13, Ch. 387, L. 1995.

7-3-1206. Form of ballot. At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used in general elections, and shall have printed thereon the following:

Shall the corporate existence and government of the county of .... and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of chapter 121, acts of the eighteenth legislative assembly of the state of Montana, to be known and designated as "city and county of ...."?

YES.

NO.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

Cross-References

Ballots — generally, Title 13, ch. 12.

7-3-1207. Conduct of election. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

Cross-References

General elections law, Title 13.

7-3-1208. Election of commission upon favorable vote. (1) If the majority of the votes cast at the election are in favor of the consolidation and merging, the board of county commissioners of the county shall, within 2 weeks after the election returns have been canvassed, order a special election to be held in conjunction with the next regular or primary election for the purpose of electing the number of members of the commission to which the consolidated municipality is entitled. This order must specify the time when the election will be held. The board of county commissioners, immediately upon making the order, shall issue a proclamation setting forth the purpose for which the special election is held and the date of holding the election. The proclamation must be published in the manner prescribed by 13-1-108.

(2) A primary election may not be held for the purpose of nominating candidates for members of the commission to be voted for at the special election. The candidates must be nominated directly by a petition that is in substantially the same form and signed by the same number of signers as required for primary nominating petitions. The election must be conducted, the vote must be returned and canvassed, and the result must be declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 5, Ch. 121, L. 1923; re-en. Sec. 5520.5, R.C.M. 1935; R.C.M. 1947, 11-3405; amd. Sec. 383, Ch. 571, L. 1979; amd. Sec. 14, Ch. 387, L. 1995.

Cross-References

Date of general election, 13-1-104.
Primary nominating petitions, Title 13, ch. 10, part 5.
Canvass of returns, Title 13, ch. 15.

7-3-1209. Resolution declaring creation of consolidated government. (1) At the first meeting of the commission whose members are first elected under the provisions of this part, the commission shall adopt a resolution reciting the filing of the petition provided for in 7-3-1204, the ordering and holding of a special election as requested in the petition, the result of the election and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality. This resolution must be in duplicate and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of the resolution must be filed in the office of the clerk of the commission, and the other copy must be transmitted to and filed in the office of the secretary of state.

(2) Immediately upon the adoption of the resolution by the commission, the separate corporate existence of the county and of each city and town therein is considered to be consolidated and merged into one municipal corporation under the name selected, designated, and adopted as provided in this part, and the consolidated municipality is considered to have succeeded to and to possess and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns consolidated and merged.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part); amd. Sec. 4, Ch. 262, L. 1979.

7-3-1210. Existing contracts continued. All contracts entered into by the county or by any city or town therein or on behalf of any improvement district by such county or by any such city or town prior to the election and qualification of a commission under this part and part 13 shall continue in full force and effect subsequent thereto. Public improvements for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this part and part 13 may thereafter be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 115, Ch. 121, L. 1923; re-en. Sec. 5520.116, R.C.M. 1935; R.C.M. 1947, 11-3556.

Cross-References

Sanctity of contracts, Art. II, sec. 31, Mont. Const.

7-3-1211. Treatment of existing ordinances. The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality which are of general application in such city or town shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within 10 days after the making of such order. All other ordinances and resolutions of such city or town and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

History: En. Sec. 116, Ch. 121, L. 1923; re-en. Sec. 5520.117, R.C.M. 1935; R.C.M. 1947, 11-3557.

Cross-References

Effect of amendment of charter or change in form of government on resolutions and ordinances — alternative forms, 7-3-106, 7-3-1105.

7-3-1212. Treatment of existing officers. The members of the board of county commissioners of the county and members of the council of every city and town therein holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county shall continue in office and in the performance of their duties until the first commission shall have been elected and have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county or under the government of any city or town therein at the date of such election shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties or the discontinuance of such offices or positions.

History: En. Sec. 117, Ch. 121, L. 1923; re-en. Sec. 5520.118, R.C.M. 1935; R.C.M. 1947, 11-3558.

Cross-References

Alternative forms — transitions of personnel, officials, and governing body, 7-3-158, 7-3-160, 7-3-161.

7-3-1213. Power to effectuate transition. The commission shall have power to make all necessary regulations not inconsistent with this part or part 13 for the transition from the several governments of and within the county to the government provided by this part and part 13, including the transfer to the treasury of the consolidated city and county of all funds and money of such several governments.

History: En. Sec. 119, Ch. 121, L. 1923; re-en. Sec. 5520.120, R.C.M. 1935; R.C.M. 1947, 11-3560.

7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality are vested in a commission. For the purpose of determining the number of members composing the commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 govern and control the classification of the consolidated municipalities.

(2) (a) In consolidated municipalities of the first class, the commission shall consist of seven members.

(b) In consolidated municipalities of the second class, third class, or fourth class, the commission shall consist of five members.

(c) In consolidated municipalities of the fifth class, sixth class, or seventh class, the commission shall consist of three members.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 5, Ch. 262, L. 1979.

7-3-1215. Qualifications for commission. (1) Members of the commission must be qualified electors of the consolidated municipality and may not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit the member's office.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 6, Ch. 262, L. 1979; amd. Sec. 329, Ch. 61, L. 2007.

Cross-References

Qualified electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

7-3-1216. Term of office of commission members. (1) Except as provided in subsection (2), the term of office of members of the commission shall be 4 years and shall commence on the first Monday of January following their election.

(2) The terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire when their successors are elected and qualified in the first year following their election, and the terms of the remaining members first elected shall expire when their successors are elected and qualified in the third year following their election.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 2, Ch. 220, L. 1985.

7-3-1217. Vacancies. (1) If a vacancy occurs in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term.

(2) Absence from all regular meetings for a period of 90 days shall operate to vacate the seat of a member unless such absence be authorized by the commission.

History: (1)En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; Sec. 11-3407, R.C.M. 1947; (2)En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; Sec. 11-3413, R.C.M. 1947; R.C.M. 1947, 11-3407(part), 11-3413(part).

Cross-References

Vacancy in county offices — what constitutes, 7-4-2206.

Vacancy in municipal offices — what constitutes, 7-4-4111.

7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on the first Monday of January following a regular municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of the commission after the special election at which the first members of the commission are elected shall be held at 2 p.m. on the first day of the third month following the special election, and at this meeting the members of the commission shall determine by lot the members whose terms will expire on the first Monday of January in the first year following such special election and the members whose terms will expire on the first Monday of January in the third year following such election.

(2) Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. A notice of a meeting shall state the subject to be considered at the meeting, and no other subject shall be considered at the meeting.

(3) All meetings of the commission and of committees thereof shall be open to the public, and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any meeting in regard to any matter considered thereat.

History: En. Sec. 8, Ch. 121, L. 1923; re-en. Sec. 5520.8, R.C.M. 1935; R.C.M. 1947, 11-3408; amd. Sec. 7, Ch. 262, L. 1979; amd. Sec. 384, Ch. 571, L. 1979.

7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the special election at which the members of the commission are first elected and after that time at its meeting on the first Monday of January following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice president.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by part 13 or this part and the ordinances of the municipality. The president is the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency, the president shall, if authorized by a vote of the commission,

take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of the president's absence or disability, the vice president shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance is ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform other duties that may be required by part 13 or this part or by the commission.

History: (1), (2)En. Sec. 10, Ch. 121, L. 1923; re-en. Sec. 5520.10, R.C.M. 1935; Sec. 11-3410, R.C.M. 1947; (3)En. Sec. 11, Ch. 121, L. 1923; re-en. Sec. 5520.11, R.C.M. 1935; Sec. 11-3411, R.C.M. 1947; R.C.M. 1947, 11-3410, 11-3411; amd. Sec. 3, Ch. 220, L. 1985; amd. Sec. 330, Ch. 61, L. 2007.

Cross-References

Manager — chief executive of government, 7-3-1242.

7-3-1220. Conduct of commission business. (1) The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It may compel the attendance of absent members, may punish its members for disorderly behavior, and, by a vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules. However, a member may not be expelled unless notified of the charge against the member and given an opportunity to be heard.

(2) A majority of the members elected to the commission constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in the manner and under the penalties prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission is necessary to adopt any ordinance, resolution, order, or vote. However, a vote to adjourn or regarding the attendance of absent members may be adopted by a majority of the members present.

History: (1)En. Sec. 9, Ch. 121, L. 1923; re-en. Sec. 5520.9, R.C.M. 1935; Sec. 11-3409, R.C.M. 1947; (2)En. Sec. 12, Ch. 121, L. 1923; re-en. Sec. 5520.12, R.C.M. 1935; Sec. 11-3412, R.C.M. 1947; R.C.M. 1947, 11-3409, 11-3412; amd. Sec. 331, Ch. 61, L. 2007.

7-3-1221. Compensation of commission members. (1) The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for city council members of cities of the first class.

(2) In addition to any compensation authorized by this section, each member of the commission must receive the same sum prescribed by law for county commissioners per mile for any distance in excess of 10 miles necessarily traveled in going from and returning to the member's residence because of attendance at a regular or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.

History: En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; R.C.M. 1947, 11-3413(part); amd. Sec. 332, Ch. 61, L. 2007.

Cross-References

Mileage allowance, Title 2, ch. 18, part 5.

Compensation of municipal officers, 7-4-4201.

7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions must be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, must be confined to one subject, which must be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations must be confined to the subject of appropriations. An ordinance may not be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading must be in full unless a written or printed copy of the measure has been furnished to each member of the commission prior to final reading.

(2) The enacting clause of all ordinances passed by the commission must be: "Be it ordained by the city and county of ________", and the enacting clause of all ordinances submitted by the initiative must be: "Be it ordained by the people of the city and county of ________".

(3) An ordinance, resolution, or section of an ordinance or resolution may not be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section of the ordinance or resolution as revised or amended.

(4) Every ordinance or resolution, upon its final passage, must be recorded in a book kept for that purpose and must be authenticated by the signatures of the president and clerk. Within 10

days after its final passage, each ordinance or resolution must be published at least once in the manner that the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors must be published and may be amended or repealed by the commission, as in the case of other ordinances.

(6) (a) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.

(b) The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.

History: (1), (2)En. Sec. 14, Ch. 121, L. 1923; re-en. Sec. 5520.14, R.C.M. 1935; Sec. 11-3414, R.C.M. 1947; (3)En. Sec. 16, Ch. 121, L. 1923; re-en. Sec. 5520.16, R.C.M. 1935; Sec. 11-3416, R.C.M. 1947; (4)En. Sec. 18, Ch. 121, L. 1923; re-en. Sec. 5520.18, R.C.M. 1935; Sec. 11-3418, R.C.M. 1947; (5)En. Sec. 24, Ch. 121, L. 1923; re-en. Sec. 5520.24, R.C.M. 1935; Sec. 11-3424, R.C.M. 1947; R.C.M. 1947, 11-3414, 11-3416, 11-3418, 11-3424(part); amd. Sec. 4, Ch. 466, L. 2003; amd. Sec. 2, Ch. 261, L. 2005.

Cross-References

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

7-3-1223. Effective date of ordinances. (1) Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after 30 days from the date of their passage.

(2) When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form and the committee of the petitioners requires that such proposed ordinance be submitted to a vote of the electors, as provided in 7-3-1229, the ordinance as passed by the commission shall not take effect until after such vote, and if the proposed ordinance so submitted be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

(3) Ordinances adopted by the electors shall take effect at the time fixed therein or, if no time is specified, 30 days after the adoption thereof.

History: (1), (3)En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; Sec. 11-3417, R.C.M. 1947; (2)En. Sec. 23, Ch. 121, L. 1923; re-en. Sec. 5520.23, R.C.M. 1935; Sec. 11-3423, R.C.M. 1947; R.C.M. 1947, 11-3417(part), 11-3423.

7-3-1224. Emergency measures. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health, or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part).

7-3-1225. Vote required on certain measures. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege may be passed without first submitting the application therefor to the qualified electors in the manner provided by 7-5-4321 and 7-5-4322.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part); amd. Sec. 8, Ch. 262, L. 1979.

7-3-1226. Codification of ordinances. (1) Ordinances may be revised, codified, rearranged, and published in book form under appropriate titles, chapters, and sections, and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification.

(2) Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification,

and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes, or journals would be received.

History: En. Sec. 15, Ch. 121, L. 1923; re-en. Sec. 5520.15, R.C.M. 1935; R.C.M. 1947, 11-3415.

Cross-References

Register of ordinances and codification, 7-5-107.

7-3-1227. Petition for initiative. (1) Any proposed ordinance, except an ordinance making an appropriation, may be submitted to the commission by petition signed by 10% of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission.

(2) All petition papers circulated with respect to any proposed ordinance must be uniform in character and must contain the proposed ordinance in full.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in 7-3-1227 through 7-3-1229 for initiating ordinances.

History: En. Secs. 19, 24, Ch. 121, L. 1923; re-en. Secs. 5520.19, 5520.24, R.C.M. 1935; R.C.M. 1947, 11-3419, 11-3424(part); amd. Sec. 9, Ch. 584, L. 1999.

Cross-References

Right of initiative, Art. XI, sec. 8, Mont. Const.

Procedure to exercise right of initiative or referendum, 7-5-132.

7-3-1228. Action on initiative petition. (1) If an initiative petition or amended petition is found sufficient by the clerk, the clerk shall certify it and shall submit the ordinance set forth in the petition to the commission at its next meeting, and the commission shall read and refer it to an appropriate committee, which may be a committee of the whole.

(2) Provision must be made for public hearings upon the proposed ordinance before the committee to which it is referred. After the hearings, the committee shall report the ordinance to the commission, with its recommendations, not later than 60 days after the date on which the ordinance was submitted to the commission by the clerk.

(3) Upon receiving the ordinance from the committee, the commission shall consider it and shall take final action on the ordinance within 30 days from the date of the committee report.

History: En. Sec. 20, Ch. 121, L. 1923; re-en. Sec. 5520.20, R.C.M. 1935; R.C.M. 1947, 11-3420; amd. Sec. 333, Ch. 61, L. 2007.

Cross-References

Processing of petition by governing body, 7-5-133.

7-3-1229. Submission of initiative measure to electors. (1) If the commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition, the committee of the petitioners may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing, either at a public hearing before the committee to which the proposed ordinance was referred or during consideration by the commission. If the committee of petitioners requires the submission of a proposed ordinance to a vote of the electors, the committee shall certify that fact to the clerk and file in the clerk's office a certified copy of the ordinance, in the form in which it is to be submitted, within 10 days after final action on the ordinance by the commission.

(2) Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners, the clerk shall certify the fact to the commission at its next regular meeting. The proposed ordinance must be submitted to a vote of the electors at the next regular or primary election. If a majority of those voting on a proposed ordinance vote in favor of the proposed ordinance, it is an ordinance of the municipality.

History: (1)En. Sec. 21, Ch. 121, L. 1923; re-en. Sec. 5520.21, R.C.M. 1935; Sec. 11-3421, R.C.M. 1947; (2)En. Sec. 22, Ch. 121, L. 1923; re-en. Sec. 5520.22, R.C.M. 1935; Sec. 11-3422, R.C.M. 1947; R.C.M. 1947, 11-3421, 11-3422; amd. Sec. 15, Ch. 387, L. 1995.

7-3-1230. Petition for referendum. (1) The electors shall have power to approve or reject at the polls any ordinance passed by the commission except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other ordinances.

(2) If, within 30 days after the final passage of an ordinance, a petition signed by 10% of the qualified electors whose names appear on the register of voters on the date when such petition is filed shall be filed with the clerk requesting that the ordinance or any specified part thereof be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance or part thereof, the repeal of which is sought.

History: En. Sec. 25, Ch. 121, L. 1923; re-en. Sec. 5520.25, R.C.M. 1935; R.C.M. 1947, 11-3425.

Cross-References

Right of referendum, Art. XI, sec. 8, Mont. Const.

Initiative and referendum — generally, 7-5-132.

7-3-1231. Action on referendum petition. (1) If a referendum petition or amended petition is found sufficient, the clerk shall certify that fact to the commission at its next regular meeting and the ordinance or part of the ordinance set forth in the petition may not go into effect, or further action under the ordinance is suspended if it has gone into effect, until approved by the electors.

(2) Upon receipt of the clerk's certificate, the commission shall reconsider the ordinance or part of the ordinance, and its final vote upon reconsideration must be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon reconsideration the ordinance or part of the ordinance is not repealed, it must be submitted to the electors at the next regular or primary election. If when submitted to the electors any ordinance or part of an ordinance is not approved by a majority of those voting on the issue, it is repealed.

History: En. Sec. 26, Ch. 121, L. 1923; re-en. Sec. 5520.26, R.C.M. 1935; R.C.M. 1947, 11-3426; amd. Sec. 16, Ch. 387, L. 1995.

Cross-References

Processing of petition by governing body, 7-5-133.

7-3-1232. Preliminary acts authorized prior to submission of certain ordinances to electors. In case a petition is filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement may be taken prior to the election.

History: En. Sec. 28, Ch. 121, L. 1923; re-en. Sec. 5520.28, R.C.M. 1935; R.C.M. 1947, 11-3428.

7-3-1233. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Secs. 29, 30, 31, Ch. 121, L. 1923; re-en. Secs. 5520.29, 5520.30, 5520.31, R.C.M. 1935; R.C.M. 1947, 11-3429, 11-3430, 11-3431; amd. Sec. 9, Ch. 262, L. 1979.

7-3-1234. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 27, Ch. 121, L. 1923; re-en. Sec. 5520.27, R.C.M. 1935; R.C.M. 1947, 11-3427.

7-3-1235 through 7-3-1240 reserved.

7-3-1241. Appointment and removal of manager of consolidated municipality. (1) The commission shall appoint a manager. The manager must be chosen by the commission solely on the basis of executive and administrative qualifications and is not, when appointed, required to be a resident of the municipality. A member of the commission may not, during the time for which elected, be chosen manager. In case of the absence or disability of the manager, the commission may designate some responsible person to perform the duties of the office. The manager must receive the compensation fixed by the commission.

(2) The manager may not be appointed for a definite term but must be removable at the pleasure of the commission. If the commission determines to remove the manager, upon request, the manager must be given a written statement of the reason alleged for the proposed removal and the right to be heard on the proposed removal at a public meeting of the commission prior to the date on which the final removal takes effect. However, pending and during the hearing, the commission may suspend the manager from office. The action of the commission in suspending or removing the manager is final. It is the intention of this section to vest all authority and fix all responsibility for any suspension or removal in the commission.

History: **En. Sec. 32, Ch. 121, L. 1923; re-en. Sec. 5520.32, R.C.M. 1935; R.C.M. 1947, 11-3432(part); amd. Sec. 334, Ch. 61, L. 2007.**

7-3-1242. Role of manager. (1) The manager is the chief executive officer of the municipality.

(2) The manager is responsible to the commission for the proper administration of the affairs of the municipality placed in the manager's charge, and the manager shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in part 13 or this part. The manager may authorize the head of a department or office responsible to the manager to appoint subordinates in that department or office.

History: **En. Secs. 32, 33, Ch. 121, L. 1923; re-en. Secs. 5520.32, 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3432(part), 11-3433(part); amd. Sec. 335, Ch. 61, L. 2007.**

Cross-References

President of commission — official head of government, 7-3-1219.

7-3-1243. Appointments by manager. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training, and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed 60 days.

History: **En. Sec. 33, Ch. 121, L. 1923; re-en. Sec. 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3433(part).**

7-3-1244. Removal of appointees. (1) An officer or employee of the municipality appointed by the manager or upon the manager's authorization may be laid off, suspended, or removed from office or employment either by the manager or the appointing officer. Verbal or written notice of layoff, suspension, or removal given to an officer or employee or written notice left at or mailed to the officer's or employee's usual place of residence is sufficient to put the layoff, suspension, or removal into effect unless the person notified, within 5 days of the notice, demands a written statement of reasons for the action and the right to be heard on the action before the manager. Upon the demand, the officer making the layoff, suspension, or removal shall supply the person notified with a written statement of the reasons for the action, and the manager shall fix a time and place for the public hearing. Following the public hearing, the manager shall either confirm the layoff, suspension, or removal as specified in the notice, reinstate the person, or make another disposition of the matter that in the manager's opinion the good of the service may require.

(2) The decision of the manager is final, and there is no appeal to any officer, body, or court. A copy of the written statement of reasons given for any layoff, suspension, or removal and a copy of any written reply to the statement by the officer or employee involved, together with a copy of the decision of the manager, must be filed as a public record in the office of the clerk.

History: **En. Sec. 34, Ch. 121, L. 1923; re-en. Sec. 5520.34, R.C.M. 1935; R.C.M. 1947, 11-3434; amd. Sec. 336, Ch. 61, L. 2007.**

Cross-References

Right of access to courts, Art. II, sec. 16, Mont. Const.
Collective bargaining — municipal employees, Title 39, ch. 31.

7-3-1245. Relationship of commission and manager regarding appointments and administrative service. (1) Neither the commission nor any of its committees or members may direct or request the appointment of or removal from office or employment of any person by the manager or any of the manager's subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member of the commission may give orders to any subordinate of the manager either publicly or privately.

(2) Any violation of the provisions of this section by a member of the commission is a misdemeanor, conviction of which immediately forfeits the office of the member convicted.

History: **En. Sec. 35, Ch. 121, L. 1923; re-en. Sec. 5520.35, R.C.M. 1935; R.C.M. 1947, 11-3435; amd. Sec. 337, Ch. 61, L. 2007.**

Cross-References

Official misconduct — forfeiture of office, 45-7-401.
Misdemeanors — general penalty, 46-18-212.

7-3-1246. General duties of manager. The manager shall act as chief conservator of the peace within the municipality, supervise the administration of the affairs of the municipality, see that the ordinances of the municipality and the laws of the state are enforced, make recommendations to the commission concerning the affairs of the municipality, keep the commission advised of the financial conditions and future needs of the municipality, prepare and submit to the commission reports that may be required by that body, and perform other duties that may be prescribed by part 13 or this part or be required by ordinance or resolution of the commission.

History: **En. Sec. 36, Ch. 121, L. 1923; re-en. Sec. 5520.36, R.C.M. 1935; R.C.M. 1947, 11-3436; amd. Sec. 338, Ch. 61, L. 2007.**

7-3-1247. Attendance and participation of manager, directors, and other officers at commission meetings. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission, and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

History: **En. Sec. 37, Ch. 121, L. 1923; re-en. Sec. 5520.37, R.C.M. 1935; R.C.M. 1947, 11-3437.**

7-3-1248. Departments of consolidated municipality. (1) (a) In consolidated municipalities of the first, second, third, or fourth class, there shall be a department of finance, a police department, a department of public works, a department of health, a fire department, and such other departments and offices as may be established by ordinance.

(b) In consolidated municipalities of the fifth, sixth, or seventh class, there shall be a department of finance, a police department, a department of public works, a department of health, and such other departments and offices as may be established by ordinance.

(2) The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute, or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this part or part 13, but no function or duty assigned by this part or part 13 to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommends and the commission so authorizes, the manager may appoint one person to act as the head of two or more departments or offices, but the department of law may not thus be joined with any other department, nor may the manager be authorized to act as head of the department of finance or of any office therein other than of purchasing agent or assessor.

History: **En. Sec. 38, Ch. 121, L. 1923; re-en. Sec. 5520.38, R.C.M. 1935; R.C.M. 1947, 11-3438; amd. Sec. 10, Ch. 262, L. 1979.**

Cross-References

Classification of municipalities, 7-1-4111.

7-3-1249. Employees and employment list. (1) The number of assistants and other subordinates to be employed in or by each administrative department or office must be fixed by the commission, but the commission may authorize the manager to determine the number of assistants and subordinates in and for a specified department or office, subject to the appropriations made for the department or office.

(2) The director of finance shall maintain in the director's office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance the information regarding the officer's department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer may not pay nor shall the director of finance issue a warrant for the payment of any salary or compensation to a person whose name does not appear upon the list, nor shall payment be made at a rate other than that specified on the list. Any sum paid contrary to the provisions of this section may be recovered from any officer paying or authorizing the payment or from the surety on the officer's official bond. If, through the failure of an officer to give information to the director of finance as required in this section or through omission or error in the information, payment is made to any person whose name should not be on the list or payment is made in excess of the amount that any person whose name is rightfully on the list

should receive, then the amount of the payment or excess payment may be recovered from the officer by reason of whose failure, omission, or error the payment or excess payment was made or from the surety on the officer's official bond.

History: **En. Secs. 39, 40, Ch. 121, L. 1923; re-en. Secs. 5520.39, 5520.40, R.C.M. 1935; R.C.M. 1947, 11-3439, 11-3440; amd. Sec. 339, Ch. 61, L. 2007.**

7-3-1250. Compensation of officers and employees. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service, except those of heads of departments and heads of offices not included within regular departments, shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinance establish a schedule of compensation for the positions so graded and classified, which shall prescribe uniform compensation for like service as determined by the grading and classification by the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

History: **En. Sec. 41, Ch. 121, L. 1923; re-en. Sec. 5520.41, R.C.M. 1935; R.C.M. 1947, 11-3441.**

7-3-1251. Advisory boards. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation, and it shall be their duty to consult with and advise the officer in charge of the department or office for which they are appointed, but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

History: **En. Sec. 42, Ch. 121, L. 1923; re-en. Sec. 5520.42, R.C.M. 1935; R.C.M. 1947, 11-3442.**

7-3-1252. Investigatory powers of commission and manager. (1) The commission, the manager, or any person or committee authorized by either of them shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence.

(2) It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena or to produce such books, papers, and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

History: **En. Sec. 43, Ch. 121, L. 1923; re-en. Sec. 5520.43, R.C.M. 1935; R.C.M. 1947, 11-3443.**

Cross-References

Subpoenas — generally, Title 26, ch. 2, part 1.

7-3-1253. Disposition of money received by officers in official capacity. A person elected or appointed to an office or position under the municipal government established by part 13 and this part is not entitled to and may not receive for the person's own use any fees, emoluments, commissions, or perquisites other than the salary or compensation fixed by part 13 and this part or by the commission. All fees, emoluments, commissions, and perquisites ensuing out of the performance of official duty belong to the municipality and must be paid into the treasury of the municipality at the times and in the manner provided by the general laws of the state.

History: **En. Sec. 107, Ch. 121, L. 1923; re-en. Sec. 5520.108, R.C.M. 1935; R.C.M. 1947, 11-3548; amd. Sec. 340, Ch. 61, L. 2007.**

7-3-1254. Nonpartisan nature of government. (1) A person holding an appointive office or position in the municipal government may not directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose. A person may not orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. A person may not use or promise to use the person's influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. A person may not take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality. A person may not knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in the service of the municipality.

(2) A person in the service of the municipality may not discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. A person holding an appointive office or place in the municipal government may not act as an officer in a political organization or serve as a member of a committee of any political organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) A person who, individually or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than $50 or more than $500, by imprisonment for a term not exceeding 3 months, or both, and if the person is an officer or employee of the municipality, the person shall immediately forfeit the office or employment.

History: En. Secs. 108, 109, 110, Ch. 121, L. 1923; re-en. Secs. 5520.109, 5520.110, 5520.111, R.C.M. 1935; R.C.M. 1947, 11-3549, 11-3550, 11-3551; amd. Sec. 341, Ch. 61, L. 2007.

Cross-References

Rules of conduct for public officers and public employees, 2-2-121.

7-3-1255. Commissioners not to hold or seek other office. A person elected to the commission may not, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission becomes a candidate for any public office other than that of commissioner, the person shall immediately forfeit the office of commissioner.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part); amd. Sec. 342, Ch. 61, L. 2007.

7-3-1256. Appointive officers not to seek other office. Any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

Cross-References

Mandatory leave of absence for employees holding public office, 39-2-104.

7-3-1257. Control of conflict of interest. An officer or employee of the municipality may not have a financial interest, direct or indirect, in any contract with the municipality or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section constitutes malfeasance in office, and any officer or employee found guilty shall forfeit the office or position. A violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality renders the contract involved voidable by the manager or the commission.

History: En. Sec. 114, Ch. 121, L. 1923; re-en. Sec. 5520.115, R.C.M. 1935; R.C.M. 1947, 11-3555; amd. Sec. 343, Ch. 61, L. 2007.

Cross-References

Rules of conduct for public officers and public employees, 2-2-121.
Official misconduct, 45-7-401.

7-3-1258. Official bonds. (1) The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires to do so shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of $5,000 and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality.

(2) All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

History: En. Sec. 112, Ch. 121, L. 1923; re-en. Sec. 5520.113, R.C.M. 1935; R.C.M. 1947, 11-3553.

Cross-References

Bonds of city officers and employees, Title 2, ch. 9, part 8.

7-3-1259. Oath of office. Each officer of the municipality shall, before entering upon the duties of office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, and the oath or affirmation must be filed and kept in the office of the clerk.

History: En. Sec. 113, Ch. 121, L. 1923; re-en. Sec. 5520.114, R.C.M. 1935; R.C.M. 1947, 11-3554; amd. Sec. 344, Ch. 61, L. 2007.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

7-3-1260 through 7-3-1270 reserved.

7-3-1271. General provisions related to elections. (1) For any election held on the question of the adoption of this part and part 13 and for the first election of members of the commission thereunder if adopted, the county election administrator and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county election administrators and boards of county commissioners by the general laws of the state.

(2) After the adoption of this part and part 13 by the electors of the county and the election and qualification of a commission thereunder, elections shall be conducted as provided in Title 7 and Title 13.

History: En. Secs. 89, 90, Ch. 121, L. 1923; re-en. Secs. 5520.90, 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3530, 11-3531(part); amd. Sec. 385, Ch. 571, L. 1979.

7-3-1272. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 90, Ch. 121, L. 1923; re-en. Sec. 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3531(part).

7-3-1273. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Secs. 91, 93, Ch. 121, L. 1923; re-en. Secs. 5520.92, 5520.94, R.C.M. 1935; R.C.M. 1947, 11-3532, 11-3534(part).

7-3-1274. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 92, Ch. 121, L. 1923; re-en. Sec. 5520.93, R.C.M. 1935; R.C.M. 1947, 11-3533.

7-3-1275. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 93, Ch. 121, L. 1923; re-en. Sec. 5520.94, R.C.M. 1935; R.C.M. 1947, 11-3534(part).

7-3-1276. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 94, Ch. 121, L. 1923; re-en. Sec. 5520.95, R.C.M. 1935; Sec. 11-3535, R.C.M. 1947; (2)En. Sec. 96, Ch. 121, L. 1923; re-en. Sec. 5520.97, R.C.M. 1935; Sec. 11-3537, R.C.M. 1947; (3)En. Sec. 95, Ch. 121, L. 1923, re-en. Sec. 5520.96, R.C.M. 1935; Sec. 11-3536, R.C.M. 1947; R.C.M. 1947, 11-3535(part), 11-3536, 11-3537.

7-3-1277. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 94, Ch. 121, L. 1923; re-en. Sec. 5520.95, R.C.M. 1935; R.C.M. 1947, 11-3535(part).

7-3-1278. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 97, Ch. 121, L. 1923; re-en. Sec. 5520.98, R.C.M. 1935; R.C.M. 1947, 11-3538.

7-3-1279. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 98, Ch. 121, L. 1923; re-en. Sec. 5520.99, R.C.M. 1935; R.C.M. 1947, 11-3539(part).

7-3-1280. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 98, Ch. 121, L. 1923; re-en. Sec. 5520.99, R.C.M. 1935; R.C.M. 1947, 11-3539(part).

Part 13
City-County Consolidation Option 2 — Continued

7-3-1301. Department of finance. (1) The director of finance has charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and money; the making of special assessments; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage, and distribution of supplies needed by the municipality; and other duties as the commission may by ordinance require.

(2) The director of finance has all powers and shall perform all duties imposed upon county clerk and recorders and auditors by general law.

(3) All of the provisions of the general laws of the state with respect to budgets for cities and counties apply to the municipality.

History: En. Secs. 45, 54, Ch. 121, L. 1923; re-en. Secs. 5520.45, 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3445, 11-3454(part); amd. Sec. 4, Ch. 27, Sp. L. November 1993.

Cross-References

Duties of Clerk and Recorder, Title 7, ch. 4, part 26.
County Auditor, 7-4-3003.
County and municipal finance, Title 7, ch. 6.

7-3-1302. Fiscal year. The fiscal year of the municipality shall begin with July 1 and shall end with the succeeding June 30.

History: En. Sec. 54, Ch. 121, L. 1923; re-en. Sec. 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3454(part).

7-3-1303. Monthly financial statements. The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as shows the exact financial condition of the municipality and of each department and office thereof as of the last day of such month.

History: En. Sec. 46, Ch. 121, L. 1923; re-en. Sec. 5520.46, R.C.M. 1935; R.C.M. 1947, 11-3446.

7-3-1304. Division of audit and accounts. There is in the department of finance a division of audit and accounts, of which the director of finance is the head. As head of the office, the director is charged with keeping the books of financial account for all departments and offices of the municipality, and whenever practicable, the books and accounts must be kept in the office of the division of audit and accounts. A report must be made daily to the division of audit and accounts by each department and office, showing the receipt and disposition of all money.

History: En. Sec. 47, Ch. 121, L. 1923; re-en. Sec. 5520.47, R.C.M. 1935; R.C.M. 1947, 11-3447; amd. Sec. 345, Ch. 61, L. 2007.

7-3-1305. Conduct of audits. (1) Upon the death, resignation, removal, or expiration of the term of an officer of the municipality, the director of finance shall cause an audit and investigation of the accounts of the officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government.

(2) In case of the death, resignation, or removal of the director of finance, the manager shall cause an audit to be made of the director's accounts.

(3) If, as a result of an audit, an officer is found indebted to the municipality, the director of finance or other person making the audit shall immediately give notice to the commission, the manager, and the director of law, and the director of law shall proceed to collect the indebtedness.

History: En. Sec. 48, Ch. 121, L. 1923; re-en. Sec. 5520.48, R.C.M. 1935; R.C.M. 1947, 11-3448; amd. Sec. 346, Ch. 61, L. 2007.

7-3-1306. Division of treasury. (1) There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law, and shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class.

(2) All money received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

History: En. Sec. 49, Ch. 121, L. 1923; re-en. Sec. 5520.49, R.C.M. 1935; R.C.M. 1947, 11-3449.

Cross-References

County Treasurer, 7-4-3002.

Bond for County Treasurer, 7-4-4109.
City Treasurer, 7-4-4701.

7-3-1307. Division of purchases and supplies. There is in the department of finance a division of purchases and supplies. The head of the division is a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner and with the exceptions that may be provided by ordinance and shall, under regulations that may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. The purchasing agent has charge of the storerooms and warehouses of the municipality that the commission may by ordinance provide.

History: En. Sec. 50, Ch. 121, L. 1923; re-en. Sec. 5520.50, R.C.M. 1935; R.C.M. 1947, 11-3450; amd. Sec. 347, Ch. 61, L. 2007.

7-3-1308. Procedure for purchase, sale, and supply. (1) Before making any purchase or sale, the purchasing agent shall give opportunity for competition, under such rules as the commission may by ordinance establish.

(2) Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there is to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

History: En. Sec. 51, Ch. 121, L. 1923; re-en. Sec. 5520.51, R.C.M. 1935; R.C.M. 1947, 11-3451.

Cross-References

Municipal contracts, Title 7, ch. 5, part 43.

7-3-1309. Division of assessment. (1) There may be in the department of finance a division of assessment, the head of which may be the assessor. The division of assessment has the powers of and shall perform the duties prescribed for county assessors by general law.

(2) The division of assessment is in charge of the preparation of all special assessments for public improvements, the giving of notice of the assessments to property owners and purchasers of property under contracts for deed, and the certification of all unpaid assessments to the director of finance.

History: En. Secs. 52, 53, Ch. 121, L. 1923; re-en. Secs. 5520.52, 5520.53, R.C.M. 1935; R.C.M. 1947, 11-3452, 11-3453; amd. Sec. 3, Ch. 526, L. 1983; amd. Sec. 5, Ch. 27, Sp. L. November 1993.

Cross-References

County Assessor, 15-8-102.

7-3-1310. Limitation on tax levy. (1) An ordinance, conforming to 15-10-420, making the annual tax levy must be passed fixing the rate to be levied upon all property within the municipality to defray current expenses.

(2) Subject to 15-10-420, taxes required to be levied on account of the debt of the municipality or any district are not affected by the limits.

History: (1)En. Sec. 55, Ch. 121, L. 1923; re-en. Sec. 5520.55, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1967; Sec. 11-3455, R.C.M. 1947; (2)En. Sec. 56, Ch. 121, L. 1923; re-en. Sec. 5520.56, R.C.M. 1935; Sec. 11-3456, R.C.M. 1947; R.C.M. 1947, 11-3455, 11-3456; amd. Sec. 10, Ch. 584, L. 1999; amd. Sec. 12, Ch. 574, L. 2001.

Cross-References

Municipal all-purpose mill levy, 7-6-4451 through 7-6-4455.

7-3-1311. Authority for special taxes and special service districts. (1) Subject to 15-10-420, a municipality may levy special taxes for all purposes that counties, cities, and towns are authorized to levy by general laws of the state, and all of the provisions of those laws are applicable to and govern and control the municipality in the levying and collection of the special taxes.

(2) Subject to 15-10-420, the commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in the district a tax, in addition to any taxes authorized by 7-3-1310(1), as may be necessary with other available funds and grants to pay the cost of the special service or services. The boundaries of special service districts must be regularly reviewed by the commissioners and may be adjusted

upon recommendation by an authorized planning body in response to changing population patterns.

History: **(1)En. Sec. 57, Ch. 121, L. 1923; re-en. Sec. 5520.57, R.C.M. 1935; Sec. 11-3457, R.C.M. 1947; (2)En. Sec. 1, Ch. 162, L. 1925; re-en. Sec. 5520.58, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1967; Sec. 11-3458, R.C.M. 1947; R.C.M. 1947, 11-3457, 11-3458; amd. Sec. 11, Ch. 584, L. 1999; amd. Sec. 13, Ch. 574, L. 2001.**

Cross-References

Improvement districts, Title 7, ch. 12.

7-3-1312. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time, and under the penalties prescribed by law for the collection and payment of state and county taxes.

History: **En. Sec. 58, Ch. 121, L. 1923; re-en. Sec. 5520.59, R.C.M. 1935; R.C.M. 1947, 11-3459.**

Cross-References

County and municipal taxation, Title 7, ch. 6.

7-3-1313. Special taxing districts for indebtedness existing prior to consolidation. (1) A district comprised within the boundaries of any city, town, or district existing within the county at the time of the adoption of part 12 and this part by the electors of the consolidated government is, for the purpose of paying the interest and principal of any debt incurred by the city, town, or district prior to the adoption of the consolidated government, continued as a special district until the debt has been paid. Subject to 15-10-420, the commission shall, in the annual tax levy ordinance, levy upon the property within each district a tax, in addition to all other taxes, that the director of finance reports to be necessary to provide for paying the interest on each debt as it falls due and the principal of the debt as it matures, and no other property within the municipality is taxable or liable for the payment of any district debt.

(2) Subject to 15-10-420, the commission shall provide in the annual tax levy ordinance adopted for the levy of a tax upon all property within the municipality that the director of finance reports to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole.

(3) The tax levy for the debt of the municipality as a whole and the tax levy for the debt of each district must be a separate levy and must be distinct from and in addition to all other tax levies. The proceeds of each tax levy must be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and the fund may not be used for any other purpose.

History: **En. Sec. 59, Ch. 121, L. 1923; re-en. Sec. 5520.60, R.C.M. 1935; R.C.M. 1947, 11-3460; amd. Sec. 14, Ch. 574, L. 2001.**

7-3-1314. Payment and investigation of claims — use of warrants. (1) A claim against the municipality may not be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance may not issue a warrant for the payment of a claim unless the claim is evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred. The officer and the officer's surety are liable to the municipality for all loss or damage sustained by reason of the officer's negligent or corrupt approval of a claim.

(2) (a) The director of finance shall examine all payrolls, bills, and other claims and demands against the municipality and may not issue a warrant for payment unless the director finds that:

(i) the claim is in proper form, correctly computed, and approved;

(ii) the claim is legally due and payable; and

(iii) an appropriation has been made for the claim that has not been exhausted.

(b) The director of finance may investigate any claimant and for that purpose may summon any officer, agent, or employee of the municipality or any claimant or other person and examine the person upon oath or affirmation concerning the claim. If the director finds a claim to be fraudulent, erroneous, or otherwise invalid or that the appropriation out of which the claim is payable has been exhausted, the director may not issue a warrant for the claim. If the director of finance issues a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this subsection (2), the director and the director's sureties are individually liable to the municipality for the amount of the warrant if paid.

History: **En. Secs. 60, 61, Ch. 121, L. 1923; re-en. Secs. 5520.61, 5520.62, R.C.M. 1935; R.C.M. 1947, 11-3501, 11-3502; amd. Sec. 348, Ch. 61, L. 2007.**

7-3-1315. Certification of certain obligations by finance director. (1) A contract, agreement, or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds may not be entered into nor may any order for expenditures be valid unless the director of finance first certifies to the commission that the object or purpose for which the expenditure is to be made and the amount of the expenditure are provided for by an appropriation in the annual budget or in a supplemental budget and that the appropriation has not been expended. The certificate of the director of finance must be filed and made a matter of record in the director's office, and the appropriation for that purpose must be considered as having been set aside and expended in the amount of the contract, agreement, or obligation.

(2) All contracts, agreements, or other obligations entered into, all ordinances and resolutions passed, and all orders adopted contrary to the provisions of subsection (1) are void, and a person may not have any claim or demand against the municipality, nor may the commission or any officer of the municipality waive or qualify the limitations fixed by subsection (1) or incur for the municipality any liability in excess of the limitations.

History: **En. Secs. 62, 63, Ch. 121, L. 1923; re-en. Secs. 5520.63, 5520.64, R.C.M. 1935; R.C.M. 1947, 11-3503, 11-3504; amd. Sec. 349, Ch. 61, L. 2007.**

7-3-1316. Designation of depository banks. On or before August 1 of each year, the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks, the commission shall specify the maximum amount of municipal funds that may be kept at any time in each.

History: **En. Sec. 64, Ch. 121, L. 1923; re-en. Sec. 5520.65, R.C.M. 1935; R.C.M. 1947, 11-3505(part).**

7-3-1317. Deposit security. (1) Unless a bank designated as a depository elects to deposit securities with the treasurer as provided in subsection (2), it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited with the bank and the interest on the deposit. Any bonds of a depository must be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds that may at any time be kept by the depository. All surety bonds given by a bank in accordance with the provisions of this subsection must continue in force so long as funds of the municipality deposited in the bank are unpaid. This section may not impair the rights and remedies of the municipality on the bonds under the laws of the state.

(2) In lieu of the surety bonds specified in subsection (1), a bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of 7-3-1322, the sinking fund of the municipality may be invested. Deposited bonds must be in an amount equal to the amount of municipal funds permitted at any time to be deposited with the bank, must be approved by the commission, and must be accompanied by proper assignment, to the end that the bank depositing and assigning the bonds will safely keep and pay over to the treasurer or the treasurer's order, on demand and free of exchange, all money at any time deposited in the bank with interest on the money at the rate agreed upon and that in case of default on the part of the bank, the commission may sell the bonds or so much of the bonds as may be necessary to realize the full amount of the funds deposited. The bank is entitled to interest on the securities deposited with the treasurer, when paid, and to the return of the securities at the termination of the trust so long as the bank is not in default. With the approval of the commission, a bank may at any time substitute other similar securities of equal value for those deposited.

(3) Bonds and other securities given by banks in accordance with this part must be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of the bonds and securities kept by the director of finance or copies of the record certified by that officer are competent and prima facie evidence of the contents and tenor of the bonds and securities.

History: **En. Secs. 64, 65, 67, Ch. 121, L. 1923; re-en. Secs. 5520.65, 5520.66, 5520.68, R.C.M. 1935; R.C.M. 1947, 11-3505(part), 11-3506, 11-3508; amd. Sec. 350, Ch. 61, L. 2007.**

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1318. Additional or new deposit security. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein, the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom, and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

History: En. Sec. 66, Ch. 121, L. 1923; re-en. Sec. 5520.67, R.C.M. 1935; R.C.M. 1947, 11-3507.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1319. Deposit of funds with depository banks. (1) All funds received by the treasurer must be deposited in the designated banks in the name of the municipality, subject to the order of the treasurer, and must be distributed among the designated banks as nearly as may be in proportion to the maximum amounts that they have been authorized to receive by the commission.

(2) Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which may not be less than 2 ½%. The interest due on the deposits must be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer receives or has in any bank funds that will probably remain on deposit 3 months or longer, the treasurer may, with the approval of the commission, either take certificates of deposit from a designated depository, payable to the treasurer's order on demand and bearing a higher rate of interest, or invest the funds in any bonds maturing within 6 months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank and the interest received as of the last day of each month.

(3) A bank receiving funds of the municipality on deposit may not pay out the money except upon checks drawn upon that bank signed by the treasurer.

History: (1)En. Sec. 68, Ch. 121, L. 1923; re-en. Sec. 5520.69, R.C.M. 1935; Sec. 11-3509, R.C.M. 1947; (2)En. Sec. 69, Ch. 121, L. 1923; re-en. Sec. 5520.70, R.C.M. 1935; Sec. 11-3510, R.C.M. 1947; (3)En. Sec. 70, Ch. 121, L. 1923; re-en. Sec. 5520.71, R.C.M. 1935; Sec. 11-3511, R.C.M. 1947; R.C.M. 1947, 11-3509, 11-3510, 11-3511; amd. Sec. 351, Ch. 61, L. 2007.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1320. Liability for deposited funds. (1) When the funds of the municipality are deposited and kept in designated banks according to the provisions of this part, the treasurer and the sureties on the treasurer's official bond are exempt from all liability for the loss of any funds deposited if the loss is caused by the failure, bankruptcy, or any other act or default of the banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss does not exempt the treasurer, the members of the commission, or sureties on their respective bonds from liability.

(2) This section may not deprive the municipality of any right or remedy against a defaulting bank or against its officers or stockholders.

History: En. Sec. 71, Ch. 121, L. 1923; re-en. Sec. 5520.72, R.C.M. 1935; R.C.M. 1947, 11-3512; amd. Sec. 352, Ch. 61, L. 2007.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1321. Authorization to incur indebtedness — limitation. (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate that exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the municipality, as ascertained by the last assessment for state and county taxes prior to incurring indebtedness. All warrants, bonds, or obligations in excess of the amount given by or on behalf of the municipality are void.

History: **En. Secs. 72, 73, Ch. 121, L. 1923; re-en. Secs. 5520.73, 5520.74, R.C.M. 1935; R.C.M. 1947, 11-3513, 11-3514; amd. Sec. 39, Ch. 614, L. 1981; amd. Sec. 2, Ch. 29, L. 2001; amd. Sec. 1, Ch. 187, L. 2007.**

Cross-References

Debt management, Title 7, ch. 7.

7-3-1322. Investment of sinking funds. (1) The sinking funds of the municipality must be in charge of a sinking fund board consisting of the president, the director of finance, and the director of law. The president is the presiding officer and the director of finance, the secretary of the board. By and with consent of the commission, the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States, state bonds or certificates of indebtedness of Montana or any other state of the United States, bonds of the municipality, registered warrants on the treasury of the municipality, bonds of any city in Montana, and in county or school bonds of Montana that may be approved by the commission.

(2) If the sinking fund is invested in bonds of the municipality, the bonds may not be canceled before maturity but must be held by the sinking fund board and the interest on the bonds paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality becomes due, the sinking fund board shall, with the consent of the commission, dispose of any of the bonds belonging to the sinking fund that, with the money on hand belonging to the sinking fund, are necessary to pay the bonds becoming due.

History: **En. Sec. 74, Ch. 121, L. 1923; re-en. Sec. 5520.75, R.C.M. 1935; R.C.M. 1947, 11-3515; amd. Sec. 353, Ch. 61, L. 2007.**

7-3-1323. Competitive, advertised bidding required for certain contracts. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance, or operation of any public works or improvements, for which must be paid a sum exceeding $2,000, shall be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: **En. Sec. 75, Ch. 121, L. 1923; re-en. Sec. 5520.76, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1967; R.C.M. 1947, 11-3516.**

Cross-References

Municipal contracts, Title 7, ch. 5, part 43.

7-3-1324. Alteration of contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality, such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material, or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

History: **En. Sec. 76, Ch. 121, L. 1923; re-en. Sec. 5520.77, R.C.M. 1935; R.C.M. 1947, 11-3517.**

Cross-References

No law impairing obligation of contracts, Art. II, sec. 31, Mont. Const.

7-3-1325 through 7-3-1330 reserved.

7-3-1331. Department of public works. (1) The department of public works is in the charge of a director who:

(a) shall manage and must have charge of the construction, repair, improvement, and maintenance of all:

(i) public buildings;

(ii) roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways;

(iii) sewers, drains, ditches, culverts, streams, and watercourses; and

(iv) boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use;

(b) shall manage and control all:

(i) public cemeteries, crematories, market places or houses, garbage and sewage disposal plants, and farms; and

(ii) all public utilities belonging to the municipality or any subdivision of the municipality;

(c) must have charge of:

(i) the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality; and

(ii) the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste; and

(d) must be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for each public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works must have the qualifications prescribed by law for county surveyors. In addition to the duties required by part 12 or this part and required by the ordinances of the municipality, the director, either in person or through a deputy having the qualifications prescribed by law for county surveyors, shall perform the duties required of county surveyors by the laws of the state.

History: (1)En. Sec. 78, Ch. 121, L. 1923; re-en. Sec. 5520.79, R.C.M. 1935; Sec. 11-3519, R.C.M. 1947; (2)En. Sec. 79, Ch. 121, L. 1923; re-en. Sec. 5520.80, R.C.M. 1935; Sec. 11-3520, R.C.M. 1947; R.C.M. 1947, 11-3519, 11-3520; amd. Sec. 12, Ch. 262, L. 1979; amd. Sec. 354, Ch. 61, L. 2007.

Cross-References

County Surveyor, Title 7, ch. 4, part 28.

7-3-1332. Public works and improvements. (1) Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained, or operated, either by contract or directly by the municipality, as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained, or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

(2) The municipality shall have the same power and authority to create special improvement districts and for like purposes and to create special lighting districts and maintenance districts for cities and towns as provided by the laws of the state.

(3) The director of public works shall be the engineer in charge of all such work, works, or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts, and maintenance districts in cities and towns shall apply to and control the establishment under this part of special improvement districts, special lighting districts, and maintenance districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance, or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

History: (1)En. Sec. 86, Ch. 121, L. 1923; re-en. Sec. 5520.87, R.C.M. 1935; Sec. 11-3527, R.C.M. 1947; (2)En. Sec. 87, Ch. 121, L. 1923; re-en. Sec. 5520.88, R.C.M. 1935; Sec. 11-3528, R.C.M. 1947; (3)En. Sec. 88, Ch. 121, L. 1923; re-en. Sec. 5520.89, R.C.M. 1935; Sec. 11-3529, R.C.M. 1947; R.C.M. 1947, 11-3527, 11-3528, 11-3529; amd. Sec. 1, Ch. 212, L. 1983.

Cross-References

Lighting districts, Title 7, ch. 12, parts 22 and 43.
Special improvement districts, Title 7, ch. 12, part 41.
Street maintenance districts, Title 7, ch. 12, part 44.

7-3-1333 through 7-3-1340 reserved.

7-3-1341. Department of law. (1) The department of law is in the charge of a director appointed by the commission without definite term who must be a resident and elector of the municipality and who must possess all of the qualifications required of county attorneys.

(2) The director has all the powers and, either personally or through designated assistants, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition, the director is chief legal adviser of and attorney for the municipality and of all departments and offices of the municipality. The director shall perform other duties that may be required by the commission.

(3) The director shall qualify by taking the oath of office prescribed by the constitution and by giving a bond in the amount required of a public administrator in a county of the same class. The director must receive from the state as part of the director's salary the same amount that is paid by the state to county attorneys in counties of the same class, and the remainder of the salary must be paid by the municipality. For all purposes in connection with criminal prosecutions, the director must be known and designated as "county attorney of the city and county of .....".

History: **En. Sec. 44, Ch. 121, L. 1923; re-en. Sec. 5520.44, R.C.M. 1935; R.C.M. 1947, 11-3444; amd. Sec. 13, Ch. 262, L. 1979; amd. Sec. 355, Ch. 61, L. 2007.**

Cross-References

Oath, Art. III, sec. 3, Mont. Const.; 7-3-1259; 7-4-101.
Bonds, 7-3-1258.
State payment to County Attorneys, 7-4-2502.
County Attorney, Title 7, ch. 4, part 27.
City attorney, Title 7, ch. 4, part 46.

7-3-1342. City court. (1) A city court is established in and for each municipality, with the jurisdiction, powers, and duties within the municipality provided by general law for city courts in cities and towns and for justices of the peace.

(2) The commission shall by ordinance determine the number of judges required for operation of the city court. City court judges are to be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled general election. The term of office for city judge is 4 years.

(3) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(4) Whenever a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term. The compensation of the city judge or judges shall be fixed by the commission.

History: **En. Sec. 85, Ch. 121, L. 1923; re-en. Sec. 5520.86, R.C.M. 1935; R.C.M. 1947, 11-3526; amd. Sec. 14, Ch. 262, L. 1979.**

Cross-References

Justices' Courts, Title 3, ch. 10.
City Courts, Title 3, ch. 11.

7-3-1343. Police department. (1) The police department is in the charge of a director, who shall be chief of the police force of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs.

(2) Officers and patrol officers of the police department, subordinate to the director, have the powers and duties conferred on and required of police officers and patrol officers in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. Police officers and patrol officers have the powers and duties conferred on and required of deputy sheriffs by the general laws of the state.

(3) For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as Sheriff of the city and county of ...., and each police officer and patrol officer shall be known and designated as deputy sheriff.

History: **En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 15, Ch. 262, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Local government law enforcement, Title 7, ch. 32.

7-3-1344. Prior rights of law enforcement officers. (1) A police officer employed by any police department established as required by law in any city or town of the county or a deputy sheriff employed by the county sheriff's office prior to the election and qualification of a commission under part 12 and this part has the same job tenure rights as though the election and qualification had not taken place.

(2) A police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the

election and qualification of a commission under part 12 and this part must be continued as a retirement fund for the police department of the municipality, subject, however, to the prior vested rights of a police officer employed by any police department established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part.

(3) The board of trustees of the police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who must be selected by a majority vote of the members of the police department on the active list of the municipality. The selection must be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms.

(4) Except as provided in this section, the police retirement fund must be continued and administered in the manner prescribed by law for retirement funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 1, Ch. 114, L. 1979; amd. Sec. 1, Ch. 93, L. 1995; amd. Sec. 2, Ch. 36, L. 2005.

Cross-References

Police retirement systems, Title 19, ch. 9, 19.

7-3-1345. Fire department. (1) The fire department of the municipality is in the charge of a director, who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government shall have no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33.

(b) Nothing in this part or part 12 shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of parts 21 and 23 of chapter 33 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities may only be organized, created, supported, financed, dissolved, and managed and their boundaries may only be changed pursuant to the provisions of parts 21 and 23 of chapter 33. These organizations may enter mutual aid agreements as provided by 7-33-2108.

History: En. Sec. 82, Ch. 121, L. 1923; re-en. Sec. 5520.83, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2, Ch. 2, L. 1965; R.C.M. 1947, 11-3523; amd. Sec. 16, Ch. 262, L. 1979.

7-3-1346. Department of health. The director of the department of health must be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in part 12 or this part, the director of the department of health has the powers and shall perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. The director also has other powers and shall perform other duties that may be prescribed by ordinance.

History: En. Sec. 80, Ch. 121, L. 1923; re-en. Sec. 5520.81, R.C.M. 1935; R.C.M. 1947, 11-3521; amd. Sec. 356, Ch. 61, L. 2007.

Cross-References

County Coroner, Title 7, ch. 4, part 29.
County health, Title 50, ch. 2.

7-3-1347. County board of health. (1) The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards, the commission shall act by ordinance, resolution, or vote and according to the procedure prescribed by this part and part 12 to be followed when acting as commission of the municipality. It shall not be necessary to the validity of any such action for the commission to declare or for the records thereof to indicate that it is acting in other than its usual capacity.

(2) Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed may be prescribed by ordinance and enforced as provided therein.

History: En. Sec. 81, Ch. 121, L. 1923; re-en. Sec. 5520.82, R.C.M. 1935; R.C.M. 1947, 11-3522.

Cross-References

County Board of Health, Title 50, ch. 2.

7-3-1348. Superintendent of schools. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of that district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent must be fixed by the commission, and the superintendent has the powers and shall perform the duties prescribed for county superintendents of schools by the laws of the state.

History: En. Sec. 84, Ch. 121, L. 1923; re-en. Sec. 5520.85, R.C.M. 1935; R.C.M. 1947, 11-3525; amd. Sec. 357, Ch. 61, L. 2007.

Cross-References

County Superintendent of Schools — duties, Title 20, ch. 3, part 2.

Parts 14 through 20 reserved

Part 21
Optional Forms of County Government
(Repealed)

7-3-2101. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 2, Ch. 123, L. 1973; R.C.M. 1947, 16-5001.

7-3-2102. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 3, Ch. 123, L. 1973; R.C.M. 1947, 16-5002.

7-3-2103. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(part).

7-3-2104. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(2); amd. Sec. 17, Ch. 262, L. 1979.

7-3-2105. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 5, Ch. 123, L. 1973; R.C.M. 1947, 16-5004.

7-3-2106. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 6, Ch. 123, L. 1973; R.C.M. 1947, 16-5005.

7-3-2107. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 7, Ch. 123, L. 1973; R.C.M. 1947, 16-5006.

7-3-2108. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 8, Ch. 123, L. 1973; R.C.M. 1947, 16-5007.

7-3-2109. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 9, Ch. 123, L. 1973; R.C.M. 1947, 16-5008; amd. Sec. 18, Ch. 262, L. 1979.

7-3-2110. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 10, Ch. 123, L. 1973; R.C.M. 1947, 16-5009.

7-3-2111. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 12, Ch. 123, L. 1973; R.C.M. 1947, 16-5011.

7-3-2112. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).

7-3-2113. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).

7-3-2114. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 13, Ch. 123, L. 1973; R.C.M. 1947, 16-5012.

7-3-2115. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 14, Ch. 123, L. 1973; R.C.M. 1947, 16-5013.

7-3-2116. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 21, Ch. 123, L. 1973; R.C.M. 1947, 16-5018.

7-3-2117. Repealed. Sec. 1, Ch. 397, L. 1983.
History: En. Sec. 22, Ch. 123, L. 1973; R.C.M. 1947, 16-5019.

7-3-2118 through 7-3-2130 reserved.

7-3-2131. Repealed. Sec. 1, Ch. 397, L. 1983.

History: En. Sec. 15, Ch. 123, L. 1973; R.C.M. 1947, 16-5014.

7-3-2132. Repealed. Sec. 1, Ch. 397, L. 1983.

History: En. Sec. 18, Ch. 123, L. 1973; R.C.M. 1947, 16-5015.

7-3-2133. Repealed. Sec. 1, Ch. 397, L. 1983.

History: En. Sec. 19, Ch. 123, L. 1973; R.C.M. 1947, 16-5016.

7-3-2134. Repealed. Sec. 1, Ch. 397, L. 1983.

History: En. Sec. 20, Ch. 123, L. 1973; R.C.M. 1947, 16-5017.

Parts 22 through 40 reserved

Part 41

Strong Mayor Municipal Government

Part Cross-References

Strong mayor form of government — option within commission-executive form of government, Title 7, ch. 3, part 2.

7-3-4101. Strong mayor form of municipal government. (1) The qualified electors of any city or town in this state may, in the manner provided in chapter 5, part 42, adopt an ordinance vesting any or all of the following powers with the office of mayor of the city or town:

(a) to appoint and remove, without consent of the council, all nonelective officers of the city or town;

(b) to exercise absolute control over all departments and divisions of the city or town created in this title or that may be created by the council;

(c) to appoint one or more administrative assistants to assist in the direction of the operations of the various city departments and agencies;

(d) to be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in chapter 6, part 42;

(e) to appoint a budget and finance director whose functions include the preparation of the annual municipal budget under the direction of the mayor.

(2) If any ordinance duly adopted in accordance with this section is in conflict with 7-4-4114, 7-4-4303, 7-4-4305, 7-5-4102(1), 7-5-4122, 7-5-4205, and 7-5-4206, the provisions of this section prevail.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part); amd. Sec. 8, Ch. 485, L. 1997.

7-3-4102. Relationship of administrative assistants and budget and finance director to mayor. (1) The administrative assistants are answerable solely to the mayor.

(2) The budget and finance director is answerable solely to the mayor and serves at the mayor's pleasure.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part); amd. Sec. 358, Ch. 61, L. 2007.

Part 42

Municipal Commission Government

Part Cross-References

Weak mayor form of government — option within commission-executive form of government, Title 7, ch. 3, part 2.

7-3-4201. Definitions. In the construction of this part, the following rules must be observed unless that construction would be inconsistent with the manifest intent or repugnant to the context of the statute:

(1) The words "council member" or "city council member" must be construed to mean "council member" when applied to cities under this part.

(2) The word "electors" must be construed to mean persons qualified to vote for elective offices at regular municipal elections.

(3) The words "franchise" and "right" include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, that does not belong to citizens generally by common right.

(4) When an office or officer is named in any law referred to in this part, it must, when applied to cities under this part, be construed to mean the office or officer having the same function or duties under the provisions of this part or under ordinances passed under authority of this part.

History: **En. Sec. 28, Ch. 57, L. 1911; re-en. Sec. 5393, R.C.M. 1921; re-en. Sec. 5393, R.C.M. 1935; R.C.M. 1947, 11-3131; amd. Sec. 359, Ch. 61, L. 2007.**

Cross-References

Electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

7-3-4202. Authorization for commission form of municipal government. Any city may abandon its organization and reorganize under the provisions of this part by proceeding as hereinafter provided.

History: **En. Sec. 1, Ch. 57, L. 1911; re-en. Sec. 5366, R.C.M. 1921; re-en. Sec. 5366, R.C.M. 1935; R.C.M. 1947, 11-3101.**

7-3-4203. Effect of part on other local government laws. All acts and parts of acts and all laws, not inconsistent with any of the provisions of this part, now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part except insofar as the same may be in conflict or inconsistent with the provisions of this part.

History: **En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R.C.M. 1921; re-en. Sec. 5399, R.C.M. 1935; R.C.M. 1947, 11-3137.**

7-3-4204. Laws governing city. All laws governing cities of the first, second, and third classes and not inconsistent with the provisions of this part shall apply to and govern cities organized under this part. All bylaws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this part.

History: **En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).**

7-3-4205. City to be governed by mayor and council members. Each city must be governed by a mayor and council members, as provided in 7-3-4215, each of whom has the right to vote on all questions coming before the council.

History: **En. Sec. 15, Ch. 57, L. 1911; re-en. Sec. 5380, R.C.M. 1921; re-en. Sec. 5380, R.C.M. 1935; R.C.M. 1947, 11-3117; amd. Sec. 360, Ch. 61, L. 2007.**

7-3-4206. Territorial limits and property. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description which were vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part.

History: **En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).**

7-3-4207. Requirements of petitions. Petitions provided for in this part must be signed by only legal voters of the city. Each petition must contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides and the petitioner's length of residence in the city. The petition must also be accompanied by the affidavit of one or more legal voters of the city stating that the signers of the petition were, at the time of signing, legal voters of the city and the number of signers at the time that the affidavit was made.

History: **En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R.C.M. 1921; re-en. Sec. 5398, R.C.M. 1935; amd. Sec. 2, Ch. 105, L. 1951; R.C.M. 1947, 11-3136; amd. Sec. 361, Ch. 61, L. 2007.**

Cross-References

Petitions — general requirements, 7-1-4130.

7-3-4208. Petition to organize under commission form — election required. (1) When a petition on the question of reorganization under this part is filed with the city council and is signed by not less than 25% of the qualified electors of the city registered for the last preceding general city election, the city council shall order a special election to be held in conjunction with the next regular or primary election. At this election, the question of reorganization of the city under the provisions of this part must be submitted to the qualified electors of the city.

(2) The order of the city council must specify the time when the election will be held.

History: **En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec. 5367, R.C.M. 1921; re-en. Sec. 5367, R.C.M. 1935; R.C.M. 1947, 11-3102; amd. Sec. 8, Ch. 250, L. 1985; amd. Sec. 17, Ch. 387, L. 1995.**

7-3-4209. Proclamation and notice of election. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called and the date of holding such special election. The proclamation shall be published for 10 consecutive days in each daily newspaper published in said city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and such proclamation shall also be posted in at least five public places within such city.

History: **En. Sec. 3, Ch. 57, L. 1911; re-en. Sec. 5368, R.C.M. 1921; re-en. Sec. 5368, R.C.M. 1935; R.C.M. 1947, 11-3103.**

7-3-4210. Form of ballot. At such election the ballots to be used shall be printed upon plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of .... the question of reorganization of the city of .... under Chapter 57, Laws of 1911" and shall be substantially in the following form:

FOR reorganization of the city of .... under chapter 57, Laws of 1911.

AGAINST reorganization of the city of .... under chapter 57, Laws of 1911.

History: **En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).**

7-3-4211. Conduct of election. Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: **En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).**

Cross-References

Elections, Title 13.

7-3-4212. Effect of vote on question. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of 2 years thereafter.

History: **En. Sec. 5, Ch. 57, L. 1911; re-en. Sec. 5370, R.C.M. 1921; re-en. Sec. 5370, R.C.M. 1935; R.C.M. 1947, 11-3105.**

7-3-4213. Election for first city officers. (1) If a majority of the votes cast at the election is in favor of reorganization, the city council shall, at its first regular meeting held after the election, order a special election to be held for the purpose of electing a mayor and the number of council members to which the city is entitled. The order must specify the time of holding the election, which must be held in conjunction with a regular or primary election. The mayor shall issue a proclamation setting forth the purposes for which the special election is called and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the city if there is a daily newspaper or once a week for 2 consecutive weeks in each weekly newspaper published in the city. A copy of the proclamation must be posted at each voting place within the city and in at least 10 of the most public places in the city.

(2) The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law in respect to other city elections.

History: **(1)En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec. 5371, R.C.M. 1921; re-en. Sec. 5371, R.C.M. 1935; Sec. 11-3106, R.C.M. 1947; (2)En. Sec. 7, Ch. 57, L. 1911; re-en. Sec. 5372, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; Sec. 11-3107, R.C.M. 1947; R.C.M. 1947, 11-3106, 11-3107; amd. Sec. 9, Ch. 250, L. 1985; amd. Sec. 18, Ch. 387, L. 1995; amd. Sec. 362, Ch. 61, L. 2007.**

7-3-4214. First term of office. (1) The mayor and council members elected at a special election shall qualify and their terms of office must begin on the first Monday after their election. The terms of office of the mayor and council members or city council members in the city in office at the beginning of the term of office of the council members first elected under the provisions of this part end, and the terms of office of all their appointed officers in force in the city, except as provided in this part, end, as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all council members elected at the special election expire on the first Monday in January of the first even-numbered year following their election. At the first regular city election held in the year prior to the year in which the terms of office of the mayor and council members elected at the special election expire, a mayor and two council members must be elected in cities having a population of less than 25,000. The mayor elected at the first general city election shall hold office for 4 years, one of the council members elected at the first city election shall hold office for 2 years, and the other of the council members elected at the first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four council members must be elected in cities having a population of 25,000 or more, and the mayor elected at the first general city election shall hold office for 4 years. Two of the council members elected at the first general city election shall hold office for 2 years, and the other two of the council members elected at the first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The council members elected at the first general city election shall decide by lot, in a manner that they may select, which members shall hold the office of council member the term of which expires 2 years after the election and which members shall hold the office for a term of 4 years.

History: **En. Secs. 10, 11, Ch. 57, L. 1911; re-en. Secs. 5375, 5376, R.C.M. 1921; re-en. Secs. 5375, 5376, R.C.M. 1935; R.C.M. 1947; 11-3110, 11-3111(part); amd. Sec. 386, Ch. 571, L. 1979; amd. Sec. 363, Ch. 61, L. 2007.**

7-3-4215. Council members and mayor to be elected. (1) In every city of the third class, there must be a mayor and two council members. In every city of the second class, there must be a mayor and two council members. In every city of the first class having a population of less than 25,000, there must be a mayor and two council members. In every city of the first class having a population of 25,000 or more, there must be a mayor and four council members.

(2) The mayor and all council members must be elected at large.

History: **En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part); amd. Sec. 364, Ch. 61, L. 2007.**

7-3-4216. General term of office. The terms of office of the mayor and all council members elected after the first term is 2 years.

History: **En. Sec. 11, Ch. 57, L. 1911; re-en. Sec. 5376, R.C.M. 1921; re-en. Sec. 5376, R.C.M. 1935; R.C.M. 1947, 11-3111(part); amd. Sec. 365, Ch. 61, L. 2007.**

7-3-4217. Oath of office and official bond. Every person who has been declared elected mayor or council member shall, within 10 days after the declaration, take and file with the city clerk an oath of office in the form and manner provided by law and shall execute and give sufficient bond to the municipal corporation in the sum of $10,000, conditioned for the faithful performance of the duties of the office. This bond must be approved by the judge of the district court of the county in which the city is situated and must be filed with the clerk and recorder of the county in which the city is situated.

History: **En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(9); amd. Sec. 366, Ch. 61, L. 2007.**

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Official bonds, Title 2, ch. 9, part 8.

7-3-4218. Vacancies. (1) Vacancies in the office of mayor or council member must be filled by appointment made by a majority vote of the remaining members of the council. If in filling a vacancy a tie vote should occur, then the person to fill the vacancy must be determined by lot in a manner that the council may provide.

(2) A person appointed to fill a vacancy shall hold office until the next general election and until a successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the predecessor was elected.

History: **En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part); amd. Sec. 367, Ch. 61, L. 2007.**

7-3-4219. Council offices. The council shall have its office at the city hall.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4220. Council meetings. (1) Regular meetings of the council must be held on the first Monday after the election of council members and after that meeting at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two council members.

(2) All meetings of the council, whether regular or special, at which any person not a city officer is admitted must be open to the public.

History: En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; R.C.M. 1947, 11-3125(part); amd. Sec. 368, Ch. 61, L. 2007.

Cross-References

Open meetings, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

7-3-4221. Conduct of business. (1) (a) In cities having a mayor and two council members, the mayor and one council member or two council members constitute a quorum and the affirmative vote of the mayor and one council member or the affirmative vote of two council members is necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(b) In cities having a mayor and four council members, the mayor and two council members or three council members constitute a quorum and the affirmative vote of the mayor and two council members or the affirmative vote of three council members is necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(2) Upon every vote the ayes and nays must be called and recorded. Every motion, resolution, or ordinance must be reduced to writing and read before the vote is taken. Every resolution or ordinance passed by the council must be signed by the mayor or by two council members and must be recorded before it is in force.

(3) The mayor is the president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice president of the council, and in case of a vacancy in the office of mayor or the absence or inability of the mayor, the vice president shall perform the duties of the mayor.

History: (1), (2)Ap. p. Sec. 16, Ch. 57, L. 1911; re-en. Sec. 5381, R.C.M. 1921; re-en. Sec. 5381, R.C.M. 1935; Sec. 11-3118, R.C.M. 1947; Ap. p. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; Sec. 11-3119, R.C.M. 1947; (3)En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; Sec. 11-3125, R.C.M. 1947; R.C.M. 1947, 11-3118, 11-3119(part), 11-3125(part); amd. Sec. 369, Ch. 61, L. 2007.

7-3-4222. Adoption of ordinances. (1) Each ordinance or resolution appropriating money, ordering any street or sewer improvement, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose must be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption of the ordinance or resolution.

(2) An ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety that contains a statement of its urgency and is passed by a two-thirds vote of the council, may not go into effect before 10 days from the time of its final passage. If during the 10-day period a petition signed by electors of the city equal in number to at least 25% of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of the ordinance, is presented to the council, the ordinance is suspended from going into operation and the council shall reconsider the ordinance. If the ordinance is not entirely repealed, the council shall submit the ordinance to the vote of the electors of the city, either at a general election or at a special municipal election held in conjunction with a regular or primary election. The ordinance may not go into effect or become operative unless a majority of the electors voting on the ordinance vote in favor of its adoption.

History: En. Secs. 23, 31, Ch. 57, L. 1911; re-en. Secs. 5388, 5396, R.C.M. 1921; re-en. Secs. 5388, 5396, R.C.M. 1935; R.C.M. 1947, 11-3126(part), 11-3134; amd. Sec. 38, Ch. 575, L. 1981; amd. Sec. 19, Ch. 387, L. 1995.

Cross-References

Ordinances — general provisions, Title 7, ch. 5, part 1.

7-3-4223. Granting of franchises. A franchise or right to occupy or use the streets, highways, bridges, or public places in a city may not be granted, renewed, or extended except by ordinance. A franchise or grant for interurban or street railways, gasworks or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities or renewal or extension of the franchise or grant within the city must be authorized or approved by a majority of the electors voting on the issue at a general election or a special election held in conjunction with a regular or primary election as provided in 7-5-4321 and 7-5-4322.

History: En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388, R.C.M. 1921; re-en. Sec. 5388, R.C.M. 1935; R.C.M. 1947, 11-3126(part); amd. Sec. 20, Ch. 387, L. 1995.

Cross-References

Franchises — general provisions, 7-5-4321, 7-5-4322.

7-3-4224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).

7-3-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).

7-3-4226. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).

7-3-4227. Abandonment of commission form. (1) Any city which has operated for more than 1 year under the provisions of this part may abandon such organization and accept the provisions of the general law of the state applicable to cities of its population.

(2) Upon the petition of not less than 10% of the electors of the city registered for the preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition is filed at least 75 days prior to the date of the election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population or, if formerly organized under special charter, resume the special charter?"

(3) If the majority of the votes cast at such election is in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of these officers, the city shall become a city under the general law of the state, but this change may not in any manner or degree affect the property, rights, or liabilities of any nature of the city but shall merely extend to each change in its form of government.

(4) Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question may not be submitted again for a period of 2 years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of 2 years.

History: En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. 5397, R.C.M. 1921; re-en. Sec. 5397, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1951; R.C.M. 1947, 11-3135; amd. Sec. 20, Ch. 262, L. 1979; amd. Sec. 10, Ch. 250, L. 1985.

Cross-References

Elections, Title 13.

7-3-4228 through 7-3-4230 reserved.

7-3-4231. General provisions related to elections. (1) All electors of cities under this part who, by ordinances governing cities incorporated under the general municipal incorporation law or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities shall be qualified to vote at all elections under this part.

(2) The ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable; and in all elections in such cities the

election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as provided by law for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this part.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(8).

7-3-4232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(1).

7-3-4233. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(2) thru (4).

7-3-4234. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 137, L. 1933; re-en. Sec. 5378.1, R.C.M. 1935; R.C.M. 1947, 11-3115.

7-3-4235. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4236. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4237. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4238. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(7).

7-3-4239. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 13, L. 1933; re-en. Sec. 5377.1, R.C.M. 1935; R.C.M. 1947, 11-3113.

7-3-4240. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 13, Ch. 57, L. 1911; re-en. Sec. 5378, R.C.M. 1921; re-en. Sec. 5378, R.C.M. 1935; R.C.M. 1947, 11-3114.

7-3-4241. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R.C.M. 1921; re-en. Sec. 5379, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1971; R.C.M. 1947, 11-3116.

7-3-4242 through 7-3-4250 reserved.

7-3-4251. Powers of mayor. The mayor shall:

(1) preside at all meetings of the council;
(2) have the same power to vote as other members of the council; and
(3) have no power to veto any measure.

History: En. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; R.C.M. 1947, 11-3119(part).

7-3-4252. Powers of council. The council has and shall exercise all executive, legislative, and judicial powers and duties possessed and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part); amd. Sec. 6, Ch. 27, Sp. L. November 1993.

7-3-4253. Department structure and operation. (1) The executive and administrative powers, authority, and duties in municipal commission government cities must be distributed into and among departments as follows:

(a) in cities having a mayor and two council members, into three departments:
(i) a department of accounts, finance, and public property;
(ii) a department of public safety and charity; and
(iii) a department of streets, public improvements, and parks;

(b) in cities having a mayor and four council members, into five departments:
(i) a department of public affairs;
(ii) a department of accounts and finance;
(iii) a department of public safety and charity;
(iv) a department of street and public improvements; and
(v) a department of parks and public property.

(2) The council shall determine the powers and duties to be performed by each department of the city, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments, may require an officer or employee to perform duties in two or more departments, and may make rules necessary or proper for the efficient and economical conduct of the business of the city.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part); amd. Sec. 370, Ch. 61, L. 2007.

7-3-4254. Selection and supervision of officers and employees. (1) In cities having a mayor and two council members, the mayor is the superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four city council members, the mayor is the superintendent of the department of public affairs. The mayor has general supervision over all departments of the city and over all matters connected with the city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote one council member to be superintendent over each department of the city, but that designation may be changed whenever it appears that the public service would be benefited.

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and other officers and assistants as provided for by ordinance and that may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the enumerated offices, may require any officer elected by the council to perform the duties of any other officer, and shall appoint a city judge with the authority conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department is governed by the provisions of 7-33-4106 and 7-33-4122 through 7-33-4124. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council may create, fill, and discontinue offices and employment other than those prescribed in this section, according to their judgment of the needs of the city, by majority vote of all the members to remove any officer or employee, except as otherwise provided for in this part. The council may by resolution or otherwise prescribe, limit, or change the compensation of officers or employees.

History: (1), (2)En. Sec. 19, Ch. 57, L. 1911; re-en. Sec. 5384, R.C.M. 1921; re-en. Sec. 5384, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1943; Sec. 11-3121, R.C.M. 1947; (3)En. Sec. 20, Ch. 57, L. 1911; re-en. Sec. 5385, R.C.M. 1921; re-en. Sec. 5385, R.C.M. 1935; Sec. 11-3122, R.C.M. 1947; R.C.M. 1947, 11-3121, 11-3122; amd. Sec. 371, Ch. 61, L. 2007.

Cross-References

City Judges — City Court, Title 3, ch. 11.

7-3-4255. Compensation of mayor, council members, and employees. (1) The total compensation of council members is as follows:

(a) In cities of the third class having a population of less than 3,000, the annual salary of the mayor may not exceed $600 and the annual salary of each council member may not exceed $500. In cities of the third class having a population of 3,000 or more, the annual salary of the mayor may not exceed $1,000 and the annual salary of each council member may not exceed $900.

(b) In cities of the second class, the annual salary of the mayor may not exceed $1,650 and the annual salary of each council member may not exceed $1,500.

(c) In cities of the first class having a population of less than 30,000, the annual salary of the mayor may not exceed $4,500 and the annual salary of each council member may not exceed $3,800. In cities of the first class having a population of 30,000 and over, the annual salary of the mayor may not exceed $4,800 and the annual salary of each council member may not exceed $4,000.

(2) Any increase in salary occasioned by the advance in class or increase in population of any city commences with the month following the publication of the census showing the advance in class or increase in population.

(3) Every other officer or assistant must receive the salary or compensation that the council shall by ordinance from time to time provide, payable in equal monthly installments.

(4) The salary or compensation of all other employees of the city must be fixed by the council and is payable monthly or at shorter periods that the council may determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part); amd. Sec. 372, Ch. 61, L. 2007.

7-3-4256. Control of conflict of interest. (1) An officer or employee elected or appointed in any municipal commission government city may not have an interest, directly or indirectly, in any contract or job for work or materials or the profits of the contract or job or materials, supplies, or services to be furnished to or performed for the city. An officer or employee may not have an interest, directly or indirectly, in any contract or job for work or materials or the profits of the contract or job or services to be furnished to or performed for any person, firm, or corporation operating any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of the city. An officer or employee may not accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of the city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any person, firm, or corporation any other service on terms more favorable than are granted to the public generally. The prohibition of free transportation does not apply to police officers or firefighters in uniform. Any officer or employee of the city who, by solicitation or otherwise, exerts influence, directly or indirectly, to influence other officers or employees of the city to adopt the officer's or employee's political views or to favor any particular person or candidate for office or who in any manner contributes money, labor, or other valuable thing to any person for election purposes is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section is a misdemeanor, and every contract and agreement that violates the provisions of this section is void.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R.C.M. 1921; re-en. Sec. 5389, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3127; amd. Sec. 373, Ch. 61, L. 2007.

Cross-References

Standards of conduct, Title 2, ch. 2.

Misdemeanors, 46-18-212.

Reduced rate or free transportation on common carriers, 69-11-208.

7-3-4257. Appointment of civil service commission. (1) Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for 6 years, who shall take the place of a commissioner whose term of office expires. The presiding officer of the commission for each biennial period must be the member whose term first expires. A person while on the commission may not hold or be a candidate for any office of public trust. Two of the members constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than 3 years preceding their appointment.

(2) Before entering upon the duties of office, each of the commissioners shall take and subscribe an oath, which must be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, to obey the laws, to aid in securing

and maintaining an honest and efficient force free from partisan distinction or control, and to perform the duties of office to the best of the commissioner's ability.

(3) The council, by majority vote, may remove any of the commissioners during their term of office for cause and shall fill any vacancy that occurs in the commission for the unexpired term. The city council shall provide suitable rooms in which the civil service commission shall hold its meetings. The commission must have a clerk, who shall keep a record of all its meetings. The city shall supply the commission with all necessary equipment to properly attend to its business.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(1) thru (3); amd. Sec. 374, Ch. 61, L. 2007.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

7-3-4258. Civil service examinations. Said commission shall, on the first Monday of April and October of each year or more often if it shall be deemed necessary, under such rules as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who according to the records have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service prior to the date of the next regular examination shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed 30 days.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(4).

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-3-4259. Discharge of employees. All persons subject to the civil service examination are subject to removal from office or employment by the council for misconduct or failure to perform their duties under rules that the council may adopt, and the chief of police, chief of the fire department, or any superintendent or lead supervisor in charge of municipal work may peremptorily suspend or discharge any subordinate then under that person's direction for neglect of duty or disobedience of orders but shall, within 24 hours, report the suspension or discharge and the reason for the suspension or discharge to the superintendent of the department. The superintendent shall affirm or revoke the discharge or suspension according to the facts. The employee or the officer discharging or suspending the employee may, within 5 days of the ruling, appeal to the council, which shall fully hear and determine the matter.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(5); amd. Sec. 375, Ch. 61, L. 2007.

7-3-4260. Investigatory powers of council. The council shall have the power to enforce the attendance of witnesses and the production of books and papers and the power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(6).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

7-3-4261. Conduct of civil service commission business. Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time. Said council may prescribe such rules for the proper conduct of the business of the commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and payment to persons improperly employed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(7).

7-3-4262. Nonpartisan appointments and elections. All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness and for the good of the public service and without reference to their political faith or party affiliations.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(10).

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-4263. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part).

7-3-4264. Applicability of civil service provisions. The provisions of 7-3-4257 through 7-3-4262, 7-3-4264, and 7-3-4265 shall apply to all appointive officers and employees of such city except those especially named in 7-3-4254, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(9); amd. Sec. 8, Ch. 370, L. 1987.

7-3-4265. Violations of civil service provisions. (1) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this part relating to the civil service commission.

(2) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(3) Any violation of the provisions of 7-3-4257 through 7-3-4262, 7-3-4264, or this section shall be a misdemeanor and give grounds for removal from office.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part); amd. Sec. 9, Ch. 370, L. 1987.

Cross-References

Official misconduct, 45-7-401.
Misdemeanors, 46-18-212.

7-3-4266. Report of proceedings and financial statement. The council shall monthly print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month and furnish printed copies of the statement to the state library, the city library, the daily newspaper of the city, and persons who apply for the statement at the office of the city clerk.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R.C.M. 1921; re-en. Sec. 5391, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1943; amd. Sec. 55, Ch. 348, L. 1974; R.C.M. 1947, 11-3129.

7-3-4267. Revision of appropriations made by former council. If, at the beginning of the term of office of the first council elected in such city under the provisions of this part, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911; re-en. Sec. 5392, R.C.M. 1921; re-en. Sec. 5392, R.C.M. 1935; R.C.M. 1947, 11-3130.

Part 43

Municipal Commission-Manager Government

Part Cross-References

Alternative forms law — commission-manager form of government, Title 7, ch. 3, part 3.
Restriction on local government regulation of firearms, 45-8-351.

7-3-4301. Authorization for commission-manager form of municipal government. (1) Any municipality may abandon its organization and reorganize under the provisions of this part and part 44 by proceeding as hereinafter provided.

(2) The form of government provided for in this part and part 44 shall be known as the commission-manager plan and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided.

History: (1)En. Sec. 1, Ch. 152, L. 1917; re-en. Sec. 5400, R.C.M. 1921; re-en. Sec. 5400, R.C.M. 1935; Sec. 11-3201, R.C.M. 1947; (2)En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; Sec. 11-3211, R.C.M. 1947; R.C.M. 1947, 11-3201, 11-3211(part).

7-3-4302. Construction. (1) Except as otherwise provided in this part and part 44, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part and part 44 except insofar as the same may be in conflict or inconsistent with the provisions of this part and part 44.

(2) This part and part 44 do not repeal or modify Title 69, chapter 3, or 69-4-101, and this part and part 44 do not curtail or impair the power or authority of the public service commission, and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this part and part 44 to be made to the public service commission shall conform to the fiscal year of the city or town.

History: (1)En. Sec. 118, Ch. 152, L. 1917; re-en. Sec. 5515, R.C.M. 1921; amd. Sec. 19, Ch. 31, L. 1923; re-en. Sec. 5515, R.C.M. 1935; Sec. 11-3331, R.C.M. 1947; (2)En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R.C.M. 1921; amd. Sec. 20, Ch. 31, L. 1923; re-en. Sec. 5516, R.C.M. 1935; amd. Sec. 6, Ch. 315, L. 1974; Sec. 11-3332, R.C.M. 1947; R.C.M. 1947, 11-3331, 11-3332.

Cross-References

Public Service Commission, Title 69, ch. 1, part 1.

Regulation of municipal utilities, 69-3-101; Title 69, ch. 7.

7-3-4303. Laws governing municipality. (1) All laws governing municipalities of like population and not inconsistent with the provisions of this part and part 44 shall apply to and govern municipalities organized under this part and part 44. All bylaws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this part and part 44.

(2) The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality under the laws of the state shall, if such officer, board, commission, or department is abolished by this part and part 44, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this part and part 44.

History: (1)En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; Sec. 11-3208, R.C.M. 1947; (2)En. Sec. 112, Ch. 152, L. 1917; re-en. Sec. 5509, R.C.M. 1921; re-en. Sec. 5509, R.C.M. 1935; Sec. 11-3325, R.C.M. 1947; R.C.M. 1947, 11-3208(part), 11-3325(part).

7-3-4304. Territorial limits and property. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part or part 44.

History: En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; R.C.M. 1947, 11-3208(part).

7-3-4305. Petition to organize under commission-manager form — election required. (1) Upon the filing of a petition with the city or town council, signed by not less than 15% of the qualified electors of the municipality registered for the last general municipal election, proposing that the question of reorganization under this part and part 44 be submitted to the qualified electors of the municipality, the city or town council shall order a special election to be held in conjunction with a regular or primary election. At the election, the question of reorganization of the municipality under the provisions of this part and part 44 must be submitted to the qualified electors of the municipality.

(2) The order of the city or town council must specify the time when the election will be held.

History: En. Sec. 2, Ch. 152, L. 1917; re-en. Sec. 5401, R.C.M. 1921; re-en. Sec. 5401, R.C.M. 1935; R.C.M. 1947, 11-3202; amd. Sec. 11, Ch. 250, L. 1985; amd. Sec. 3, Ch. 319, L. 1993; amd. Sec. 21, Ch. 387, L. 1995.

7-3-4306. Proclamation and notice of election. (1) Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding such special election.

(2) The proclamation shall be published for 10 consecutive days in each daily newspaper published in said municipality if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein. Such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917; re-en. Sec. 5402, R.C.M. 1921; re-en. Sec. 5402, R.C.M. 1935; R.C.M. 1947, 11-3203.

7-3-4307. Form of ballot. At such election, the ballots to be used shall be printed on plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly" and shall be substantially in the following form:

> FOR reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.
>
> AGAINST reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

7-3-4308. Conduct of election. Such election shall be conducted and the vote canvassed and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

Cross-References

Elections, Title 13.

7-3-4309. Effect of vote on question of organization. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of 2 years from the date of the last submission.

History: En. Sec. 5, Ch. 152, L. 1917; re-en. Sec. 5404, R.C.M. 1921; amd. Sec. 1, Ch. 31, L. 1923; re-en. Sec. 5404, R.C.M. 1935; R.C.M. 1947, 11-3205.

7-3-4310. Special election for municipal officers. (1) If the majority of the votes cast at the election are in favor of reorganization, the city or town council shall hold a meeting within 1 week after the election and order a special election to be held in conjunction with a regular or primary election for the purpose of electing the number of commissioners to which the municipality is entitled. This order must specify the time of holding the election. The mayor shall issue a proclamation setting forth the purpose for which the special election is held and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the municipality if there is a daily newspaper or for 2 successive weeks in each weekly newspaper published in the municipality. A copy of the proclamation must also be posted at each voting place within the municipality and in five of the most public places in the municipality.

(2) The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law for other municipal elections.

(3) The provisions of 7-3-4341 are to be followed in the special election, except that the date of the election must be in conjunction with a regular or primary election held before the special election.

History: (1)En. Sec. 6, Ch. 152, L. 1917; re-en. Sec. 5405, R.C.M. 1921; amd. Sec. 2, Ch. 31, L. 1923; re-en. Sec. 5405, R.C.M. 1935; Sec. 11-3206, R.C.M. 1947; (2), (3)En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R.C.M. 1921; re-en. Sec. 5406, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1973; Sec. 11-3207, R.C.M. 1947; R.C.M. 1947, 11-3206, 11-3207; amd. Sec. 39, Ch. 575, L. 1981; amd. Sec. 12, Ch. 250, L. 1985; amd. Sec. 22, Ch. 387, L. 1995.

Cross-References

Elections, Title 13.

7-3-4311. Procedure for multimunicipality organization. (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of the county may or upon the presentation of a petition signed by not less than 25% of the qualified electors in the community or group of communities shall issue a proclamation ordering a special election to be held in conjunction with a regular or primary election.

(2) At this election, the question of the organization of the community or group of communities as a municipality under the provisions of this part and part 44 must be submitted to the qualified electors within the proposed municipal district. The proclamation must specify the time when and the places where the election will be held and must define the boundaries of the proposed municipal district, which must include all communities, cities, and any additional adjacent territory that, in the judgment of the board of county commissioners, provides for future urban growth.

(3) If a majority of the legal voters at the election vote in favor of the organization of the municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of the election and shall give notice for 30 days in a newspaper published within the proposed municipal district or, if a newspaper is not published in the proposed district, by posting notices in six public places within the limits of the district of the time and place or places of holding the first election for commissioners of the municipal district under this law. At the election, all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners shall appoint judges and clerks of election and canvass and declare the result of the election. The election must be held in conjunction with a regular or primary election and must be conducted in the manner prescribed by law for the election of county officers. The commissioners elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec. 5408, R.C.M. 1921; re-en. Sec. 5408, R.C.M. 1935; R.C.M. 1947, 11-3209; amd. Sec. 13, Ch. 250, L. 1985; amd. Sec. 23, Ch. 387, L. 1995.

7-3-4312. Effect of organization of communities into single municipal district. (1) Whenever any group of communities becomes a single municipal district under the provisions of this part, the commissioners elected at the first election have the same functions and authority and municipal procedure must be the same as is provided in this part when single communities, cities, or towns adopt the commission-manager form of government. The terms of all municipal officers in any prior city or town that is included in the new municipal district cease and terminate as soon as the commissioners adopt a resolution terminating the terms, and the corporate functions and existence of any prior municipal corporation may be terminated by the commissioners when the need for the further existence of the prior corporation has ended.

(2) Whenever any group of communities, including one or more incorporated cities or towns, becomes a single municipal district under this part, the municipal district has the same name as the principal incorporated city or town in the district.

(3) Whenever any group of communities, including one or more incorporated cities or towns, becomes a single municipal district under this part, the corporate property of each city or town becomes the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts may not be considered municipal property within the meaning of this part to the extent of the special assessment payments. If a prior city or town has an unpaid indebtedness, the commissioners of the new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised all of the property, and if the amount of the indebtedness of the prior city or town exceeds the inventory value of the property surrendered to the new municipality by the prior city or town, then the excess of the indebtedness over the inventory value of the property is a charge only against the taxable property within the limits of the prior

city or town and, subject to 15-10-420, must be paid by levy upon the property located within the prior city or town.

History: (1)En. Sec. 121, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5517, R.C.M. 1921; re-en. Sec. 5517, R.C.M. 1935; Sec. 11-3333, R.C.M. 1947; (2)En. Sec. 122, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5518, R.C.M. 1921; re-en. Sec. 5518, R.C.M. 1935; Sec. 11-3334, R.C.M. 1947; (3)En. Sec. 123, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5519, R.C.M. 1921; re-en. Sec. 5519, R.C.M. 1935; Sec. 11-3335, R.C.M. 1947; R.C.M. 1947, 11-3333, 11-3334, 11-3335; amd. Sec. 15, Ch. 574, L. 2001.

7-3-4313. Powers of municipalities under commission-manager plan. (1) The inhabitants of any municipality coming under the provisions of this part and part 44, as its limits now are or may hereafter be, shall be a body politic and corporate and have a corporate name and as such shall have perpetual succession and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property and make any and all rules, by ordinance or resolution, which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices and fix the salaries and compensation of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality and for the performance of the functions thereof.

(2) The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this part and part 44 or, when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917; re-en. Sec. 5409, R.C.M. 1921; re-en. Sec. 5409, R.C.M. 1935; R.C.M. 1947, 11-3210.

7-3-4314. Composition and general authority of commission. (1) The commission shall consist of three commissioners for all municipalities having a population of less than 15,000 and five commissioners for all cities having a population of 15,000 or more.

(2) The commission shall constitute the governing body, with powers as hereinafter provided to pass ordinances, adopt regulations, and appoint a chief administrative officer, to be known as the city manager, and to exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; R.C.M. 1947, 11-3211(part).

7-3-4315. Qualifications of commissioners. Members of the commission shall be residents of the city or town and have the qualifications of electors.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).

Cross-References

Electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

7-3-4316. Term of office for commissioners. (1) The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election.

The terms of office of the mayor and city council members in a municipal commission-manager city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of part 44 and this part terminate and the terms of office of all their appointed officers and of all of the employees of the city or town terminate as soon as the commissioners shall by resolution declare.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the preceding odd-numbered year. The terms of office of all other candidates expire on December 31 in any odd-numbered year following the special election provided for in this part at which the first commissioners are elected.

History: **En. Sec. 13, Ch. 152, L. 1917; re-en. Sec. 5411, R.C.M. 1921; amd. Sec. 3, Ch. 31, L. 1923; re-en. Sec. 5411, R.C.M. 1935; R.C.M. 1947, 11-3212; amd. Sec. 376, Ch. 61, L. 2007.**

7-3-4317. Vacancies. Vacancies in the commission shall be filled by the commission for the period until the next general election and until a successor is elected and qualified, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: **En. Sec. 14, Ch. 152, L. 1917; re-en. Sec. 5412, R.C.M. 1921; re-en. Sec. 5412, R.C.M. 1935; R.C.M. 1947, 11-3213; amd. Sec. 2, Ch. 175, L. 1985.**

7-3-4318. Repealed. Sec. 2, Ch. 486, L. 1993.

History: **(1)En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R.C.M. 1921; amd. Sec. 8, Ch. 31, L. 1923; re-en. Sec. 5443, R.C.M. 1935; amd. Sec. 9, Ch. 67, L. 1967; Sec. 11-3244, R.C.M. 1947; (2)En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R.C.M. 1921; re-en. Sec. 5510, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1973; Sec. 11-3326, R.C.M. 1947; R.C.M. 1947, 11-3244, 11-3326.**

7-3-4319. Designation of mayor. (1) The mayor is that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them must be chosen mayor by the remaining members of the commission.

(2) If a vacancy in the office of the mayor is caused by the expiration of the term of office, the holdover commissioner having received the highest number of votes is the mayor. If there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose the mayor's successor for the unexpired term from their own number by lot.

(3) If the commissioner who is acting as mayor is recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. If all the commissioners are recalled, the person receiving the highest number of votes at the election held to determine their successors is the mayor.

History: **(1), (2)En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; Sec. 11-3245, R.C.M. 1947; (3)En. Sec. 47, Ch. 152, L. 1917; re-en. Sec. 5445, R.C.M. 1921; re-en. Sec. 5445, R.C.M. 1935; Sec. 11-3246, R.C.M. 1947; R.C.M. 1947, 11-3245(part), 11-3246; amd. Sec. 377, Ch. 61, L. 2007.**

7-3-4320. Role of mayor. The mayor is the presiding officer, except that in the mayor's absence, a president pro tempore may be chosen. The mayor shall exercise the powers conferred and perform all duties imposed upon the mayor by part 44 and this part, the ordinances of the municipality, and the laws of the state, except that the mayor may not veto any measure. The mayor must be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: **En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; R.C.M. 1947, 11-3245(part); amd. Sec. 378, Ch. 61, L. 2007.**

7-3-4321. Salary of commissioners and mayor. The salary of each commissioner may be as follows: the salary of each commissioner shall be as established by ordinance in all classes of cities, and the salary of the commissioner acting as mayor may be 1 ½ times that of the other commissioners.

History: **En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R.C.M. 1921; re-en. Sec. 5447, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971; R.C.M. 1947, 11-3248.**

7-3-4322. Meetings of commission. (1) At 10 a.m. on the first Monday after January 1 following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at times that may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings vacates the seat of a member unless the absence is authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call special meetings of the commission with written notice of at least 12 hours to each member of the commission, served personally on each member or left at the member's usual place of residence.

History: En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; R.C.M. 1947, 11-3249(part); amd. Sec. 379, Ch. 61, L. 2007.

7-3-4323. Conduct of commission business. (1) In municipalities having three commissioners, two commissioners shall constitute a quorum and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44. In municipalities having five commissioners, three commissioners shall constitute a quorum and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44.

(2) Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

(3) All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

(4) The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission and shall keep records and perform such other duties as may be required by this part or part 44 or the commission.

History: (1), (2)En. Sec. 48, Ch. 152, L. 1917; re-en. Sec. 5446, R.C.M. 1921; re-en. Sec. 5446, R.C.M. 1935; Sec. 11-3247, R.C.M. 1947; (3)En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; Sec. 11-3249, R.C.M. 1947; (4)En. Sec. 53, Ch. 152, L. 1917; re-en. Sec. 5451, R.C.M. 1921; re-en. Sec. 5451, R.C.M. 1935; Sec. 11-3252, R.C.M. 1947; R.C.M. 1947, 11-3247, 11-3249(part), 11-3252.

7-3-4324. Procedure to enact ordinance or resolution. (1) Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be clearly stated in the title, but general appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members and filed with the clerk within 2 days and by him recorded.

(2) The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the commission of the (city or town) of (name of city or town)". The enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the (city or town) of (name of city or town)".

(3) No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns.

(4) No ordinance or resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

(5) Every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every ordinance or resolution shall be published at least once within 10 days after its final passage in such manner as is provided in this part.

History: (1) thru (4)En. Sec. 51, Ch. 152, L. 1917; re-en. Sec. 5449, R.C.M. 1921; amd. Sec. 11, Ch. 31, L. 1923; re-en. Sec. 5449, R.C.M. 1935; Sec. 11-3250, R.C.M. 1947; (5)En. Sec. 55, Ch. 152, L. 1917; re-en. Sec. 5453, R.C.M. 1921; re-en. Sec. 5453, R.C.M. 1935; Sec. 11-3254, R.C.M. 1947; R.C.M. 1947, 11-3250, 11-3254.

Cross-References

Local government ordinances, Title 7, ch. 5, part 1.

Municipal ordinances — generally, Title 7, ch. 5, part 42.

7-3-4325. Effective date of ordinance or resolution. (1) All ordinances are effective 30 days after the date of their passage by the commission except as otherwise provided in this part or part 44.

(2) All resolutions are immediately effective unless a delayed effective date is specified in the resolution.

(3) The commission may, by an affirmative vote of two-thirds of all the members, pass emergency measures to take effect at the time indicated in the measure.

History: En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; R.C.M. 1947, 11-3251(part); amd. Sec. 1, Ch. 309, L. 1993.

7-3-4326. Emergency measures. (1) An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise or extension of franchise or other special privilege or regulating the rate to be charged for its services by any public utility or right to occupy or use the streets, highways, bridges, or other public places shall never be passed as emergency measures.

(2) Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure is not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: (1)En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; Sec. 11-3251, R.C.M. 1947; (2)En. Sec. 43, Ch. 152, L. 1917; re-en. Sec. 5441, R.C.M. 1921; re-en. Sec. 5441, R.C.M. 1935; Sec. 11-3242, R.C.M. 1947; R.C.M. 1947, 11-3242, 11-3251(part).

7-3-4327. Petition for initiative. (1) Any proposed ordinance may be submitted to the commission by petition signed by at least 15% of the total number of electors registered at the last general municipal election. All petition papers circulated with respect to any proposed ordinance must be uniform in character and must contain the proposed ordinance in full and have printed or written on the petition the names and addresses of at least five electors who must be officially regarded as filing the petition and who constitute a committee of the petitioners for the purposes of this section.

(2) Each signer of a petition shall sign the person's name in ink or indelible pencil and shall place on the petition papers, after the name, the person's place of residence by street and number. The signatures of any petition papers need not all be appended to one paper, but to each paper there must be attached an affidavit by the circulator of the petition, stating the number of signers to that part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be and was made in the presence of the affiant.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided for initiating ordinances.

(4) Initiated ordinances adopted by the electors must be published and may be amended or repealed by the commission as in the case of other ordinances.

History: (1)En. Sec. 31, Ch. 152, L. 1917; re-en. Sec. 5429, R.C.M. 1921; re-en. Sec. 5429, R.C.M. 1935; Sec. 11-3230, R.C.M. 1947; (2)En. Sec. 32, Ch. 152, L. 1917; re-en. Sec. 5430, R.C.M. 1921; re-en. Sec. 5430, R.C.M. 1935; Sec. 11-3231, R.C.M. 1947; (3), (4)En. Sec. 37, Ch. 152, L. 1917; re-en. Sec. 5435, R.C.M. 1921; re-en. Sec. 5435, R.C.M. 1935; Sec. 11-3236, R.C.M. 1947; R.C.M. 1947, 11-3230, 11-3231, 11-3236; amd. Sec. 4, Ch. 319, L. 1993.

Cross-References

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.

7-3-4328. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R.C.M. 1921; re-en. Sec. 5431, R.C.M. 1935; R.C.M. 1947, 11-3232(part).

7-3-4329. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R.C.M. 1921; re-en. Sec. 5431, R.C.M. 1935; R.C.M. 1947, 11-3232(part).

7-3-4330. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 34, Ch. 152, L. 1917; re-en. Sec. 5432, R.C.M. 1921; re-en. Sec. 5432, R.C.M. 1935; Sec. 11-3233, R.C.M. 1947; (2)En. Sec. 35, Ch. 152, L. 1917; re-en. Sec. 5433, R.C.M. 1921; re-en. Sec. 5433, R.C.M. 1935; Sec. 11-3234, R.C.M. 1947; (3)En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R.C.M. 1921; re-en. Sec. 5434, R.C.M. 1935; Sec. 11-3235, R.C.M. 1947; R.C.M. 1947, 11-3233, 11-3234, 11-3235(part).

7-3-4331. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R.C.M. 1921; re-en. Sec. 5434, R.C.M. 1935; R.C.M. 1947, 11-3235(part).

7-3-4332. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 38, Ch. 152, L. 1917; re-en. Sec. 5436, R.C.M. 1921; re-en. Sec. 5436, R.C.M. 1935; Sec. 11-3237, R.C.M. 1947; (2)En. Sec. 39, Ch. 152, L. 1917; re-en. Sec. 5437, R.C.M. 1921; re-en. Sec. 5437, R.C.M. 1935; Sec. 11-3238, R.C.M. 1947; (3)En. Sec. 40, Ch. 152, L. 1917; re-en. Sec. 5438, R.C.M. 1921; re-en. Sec. 5438, R.C.M. 1935; Sec. 11-3239, R.C.M. 1947; (4)En. Sec. 41, Ch. 152, L. 1917; re-en. Sec. 5439, R.C.M. 1921; re-en. Sec. 5439, R.C.M. 1935; Sec. 11-3240, R.C.M. 1947; (5)En. Sec. 42, Ch. 152, L. 1917; re-en. Sec. 5440, R.C.M. 1921; re-en. Sec. 5440, R.C.M. 1935; Sec. 11-3241, R.C.M. 1947; R.C.M. 1947, 11-3237(part), 11-3238, 11-3239, 11-3240, 11-3241.

7-3-4333. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 44, Ch. 152, L. 1917; re-en. Sec. 5442, R.C.M. 1921; amd. Sec. 7, Ch. 31, L. 1923; re-en. Sec. 5442, R.C.M. 1935; R.C.M. 1947, 11-3243.

7-3-4334. Repealed. Sec. 9, Ch. 359, L. 1991.

History: En. Sec. 117, Ch. 152, L. 1917; re-en. Sec. 5514, R.C.M. 1921; re-en. Sec. 5514, R.C.M. 1935; R.C.M. 1947, 11-3330; amd. Sec. 301, Ch. 571, L. 1979.

7-3-4335 through 7-3-4340 reserved.

7-3-4341. General provisions relating to elections. (1) Except as otherwise provided in this part and part 44, all elections shall be conducted as provided in Title 13.

(2) Elected officials provided for in this part and part 44 shall be nominated and elected under the provisions of Title 13, chapter 14, part 1.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(5); amd. Sec. 302, Ch. 571, L. 1979.

7-3-4342. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 19, Ch. 152, L. 1917; re-en. Sec. 5417, R.C.M. 1921; re-en. Sec. 5417, R.C.M. 1935; R.C.M. 1947, 11-3218.

7-3-4343. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947 11-3216(1), (2).

7-3-4344. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 18, Ch. 152, L. 1917; re-en. Sec. 5416, R.C.M. 1921; re-en. Sec. 5416, R.C.M. 1935; R.C.M. 1947, 11-3217.

7-3-4345. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; R.C.M. 1947, 11-3215(1).

7-3-4346. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; R.C.M. 1947, 11-3215(2), (3).

7-3-4347. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1), (2)En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; Sec. 11-3215, R.C.M. 1947; (3)En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; Sec. 11-3216, R.C.M. 1947; R.C.M. 1947, 11-3215(4), 11-3216(part).

7-3-4348. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(part).

7-3-4349. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; Sec. 11-3215, R.C.M. 1947; (2)En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; Sec. 11-3216, R.C.M. 1947; R.C.M. 1947, 11-3215(5), 11-3216(4).

7-3-4350. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 75, L. 1955; R.C.M. 1947, 11-3218.1.

7-3-4351. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 20, Ch. 152, L. 1917; re-en. Sec. 5418, R.C.M. 1921; amd. Sec. 6, Ch. 31, L. 1923; re-en. Sec. 5418, R.C.M. 1935; R.C.M. 1947, 11-3219.

7-3-4352. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 29, Ch. 152, L. 1917; re-en. Sec. 5427, R.C.M. 1921; re-en. Sec. 5427, R.C.M. 1935; Sec. 11-3228, R.C.M. 1947; (2)En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R.C.M. 1921; re-en. Sec. 5428, R.C.M. 1935; amd. Sec. 2, Ch. 166, L. 1971; amd. Sec. 4, Ch. 100, L. 1973; Sec. 11-3229, R.C.M. 1947; R.C.M. 1947, 11-3228, 11-3229.

7-3-4353 through 7-3-4360 reserved.

7-3-4361. Appointment of city manager. The commission shall appoint a city manager. The manager must be appointed without regard to political beliefs and may or may not be a resident of the municipality when appointed. The manager holds office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part); amd. Sec. 380, Ch. 61, L. 2007.

7-3-4362. Role of city manager. The city manager shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4363. Powers and duties of city manager. (1) The powers and duties of the city manager are:

(a) to see that the laws and ordinances are enforced;

(b) to appoint and, except as provided in this part, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service;

(c) to exercise control over all the departments and divisions created in this part or that may be created by the commission;

(d) to attend all meetings of the commission, with the right to take part in the discussions but without the right to vote;

(e) to recommend to the commission for adoption measures considered necessary or expedient;

(f) to keep the commission fully advised as to the financial condition and needs of the city; and

(g) to perform other duties prescribed by part 44 or this part or required by ordinance or resolution of the commission.

(2) All appointments referred to in subsection (1)(b) must be made on merit and fitness, and in the classified service all appointments are subject to the civil service provisions of part 44 and this part.

History: En. Sec. 58, Ch. 152, L. 1917; re-en. Sec. 5456, R.C.M. 1921; re-en. Sec. 5456, R.C.M. 1935; R.C.M. 1947, 11-3257; amd. Sec. 381, Ch. 61, L. 2007.

7-3-4364. Salary of city manager. The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917; re-en. Sec. 5457, R.C.M. 1921; re-en. Sec. 5457, R.C.M. 1935; R.C.M. 1947, 11-3258.

7-3-4365. Investigations by commission. (1) The commission or any committee of the commission authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting investigations, the commission or committee may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which must be signed by the presiding officer of the commission or the presiding officer of the committee. The subpoenas or attachments may be served and executed by any officer authorized by law to serve subpoenas or other process. A witness may not be excused from testifying concerning the witness's knowledge of the matter under investigation in any inquiry, but the testimony may not be used against the witness in any criminal prosecution except for perjury committed upon the inquiry.

History: En. Sec. 56, Ch. 152, L. 1917; re-en. Sec 5454, R.C.M. 1921; re-en. Sec. 5454, R.C.M. 1935; R.C.M. 1947, 11-3255; amd. Sec. 24, Ch. 262, L. 1979; amd. Sec. 382, Ch. 61, L. 2007.

Cross-References

Witnesses and subpoenas, Title 26, ch. 2.

7-3-4366. Investigatory powers of city manager. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person appointed by the city manager to examine the affairs of any department or the conduct of any officer or employee has the same power to compel the attendance of witnesses and the production of books and papers and other evidence as is conferred upon the commission by this part.

History: En. Sec. 60, Ch. 152, L. 1917; re-en. Sec. 5458, R.C.M. 1921; re-en. Sec. 5458, R.C.M. 1935; R.C.M. 1947, 11-3259; amd. Sec. 25, Ch. 262, L. 1979.

7-3-4367. Control of conflict of interest. (1) Commissioners and other officers and employees may not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and may not hold any partisan political office or employment. Any commissioner who ceases to possess any of the qualifications required in this part forfeits the office, and any contract in which any member is or may be interested may be declared void by the commission.

(2) A commissioner or other officer or employee of the city or town may not accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation on terms more favorable than are granted to the public generally. Any violation of the provisions of this section is a misdemeanor and is also sufficient cause for the summary removal or discharge of the offender. The provisions for free service do not apply to police officers or firefighters in uniform or wearing their official badges when the service is provided by ordinance or to any commissioner, the city manager, or the city attorney upon official business or to any other employee or official of the city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part); amd. Sec. 383, Ch. 61, L. 2007.

Cross-References

Rules of conduct for public officers and public employees, 2-2-121.

7-3-4368. Execution of conveyances of real property. In all cities operating under the commission-manager form in Montana, the mayor is hereby designated as the proper officer to execute conveyances of real property; however, a majority of the commission may designate the city manager to execute a conveyance. In either case, the authority to act shall be authorized by the passage of a resolution.

History: En. Sec. 1, Ch. 54, L. 1955; R.C.M. 1947, 11-3286.

7-3-4369. Appropriation of property for public or municipal purposes. Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917; re-en. Sec. 5495, R.C.M. 1921; re-en. Sec. 5495, R.C.M. 1935; R.C.M. 1947, 11-3311.

7-3-4370. Use of county buildings. Whenever any city organized under this part and part 44 includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than 6% upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 124, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5520, R.C.M. 1921; re-en. Sec. 5520, R.C.M. 1935; R.C.M. 1947, 11-3336.

7-3-4371. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 105, Ch. 152, L. 1917; re-en. Sec. 5502, R.C.M. 1921; amd. Sec. 17, Ch. 31, L. 1923; amd. Sec. 2, Ch. 173, L. 1925; re-en. Sec. 5502, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1941; R.C.M. 1947, 11-3318(part); amd. Sec. 8, Ch. 430, L. 1995.

7-3-4372. Repealed. Sec. 29, Ch. 458, L. 1997.

History: (1)En. Sec. 106, Ch. 152, L. 1917; re-en. Sec. 5503, R.C.M. 1921; amd. Sec. 3, Ch. 173, L. 1925; re-en. Sec. 5503, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1941; Sec. 11-3319, R.C.M. 1947; (2)En. Sec. 107, Ch. 152, L. 1917; re-en. Sec. 5504, R.C.M. 1921; re-en. Sec. 5504, R.C.M. 1935; Sec. 11-3320, R.C.M. 1947; R.C.M. 1947, 11-3319, 11-3320; amd. Sec. 9, Ch. 430, L. 1995.

7-3-4373. Repealed. Sec. 29, Ch. 458, L. 1997.

History: (1)En. Sec. 108, Ch. 152, L. 1917; re-en. Sec. 5505, R.C.M. 1921; re-en. Sec. 5505, R.C.M. 1935; Sec. 11-3321, R.C.M. 1947; (2) thru (4)En. Sec. 109, Ch. 152, L. 1917; re-en. Sec. 5506, R.C.M. 1921; re-en. Sec. 5506, R.C.M. 1935; Sec. 11-3322, R.C.M. 1947; (5)En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; Sec. 11-3323, R.C.M. 1947; R.C.M. 1947, 11-3321, 11-3322, 11-3323(part).

7-3-4374. Details of public advertising or publication. All public advertising or publication mentioned as being necessary under the provisions of this part or part 44 shall be in a daily newspaper of general circulation within the municipality if there be such; otherwise, in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules as the commission may establish and for a term not longer than 1 year.

History: En. Sec. 70, Ch. 152, L. 1917; re-en. Sec. 5468, R.C.M. 1921; re-en. Sec. 5468, R.C.M. 1935; R.C.M. 1947, 11-3269.

Part 44
Municipal Commission-Manager Government
Continued

7-3-4401. Administrative departments. (1) The following administrative departments are hereby established:

(a) department of law;
(b) department of public service;
(c) department of public welfare;
(d) department of public safety;
(e) department of finance.

(2) The commission may by ordinance discontinue any or several departments and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917; re-en. Sec. 5459, R.C.M. 1921; re-en. Sec. 5459, R.C.M. 1935; R.C.M. 1947, 11-3260.

7-3-4402. Appointment of department directors. The city manager shall appoint a director for each department, as specified in this part or as specified by ordinance of the commission, who shall serve until removed by the city manager or until the director's successor is appointed and has qualified.

History: **En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part); amd. Sec. 384, Ch. 61, L. 2007.**

7-3-4403. Role of department director. Each director shall conduct the affairs of the director's department in accordance with the rules made by the city manager and is responsible for the conduct of the officers and employees of that department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: **En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part); amd. Sec. 385, Ch. 61, L. 2007.**

7-3-4404. Appointment of boards. The commission may appoint a municipal plan board and, upon the request of the city manager, shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: **En. Sec. 63, Ch. 152, L. 1917; re-en. Sec. 5461, R.C.M. 1921; re-en. Sec. 5461, R.C.M. 1935; R.C.M. 1947, 11-3262.**

7-3-4405. Establishment of civil service board. (1) The commission may appoint three electors of the municipality as a civil service board, with one to serve for 2 years, one for 4 years, and one for 6 years, and to take office on January 1 after the municipality comes under the provisions of part 43 and this part or as soon after that date as appointed and qualified. After the initial appointments, members of the civil service board must be appointed to serve for 6 years and until their successors have been appointed and have qualified. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing the member an opportunity to be heard in the member's own defense. Any vacancy must be filled by the commission for the unexpired term.

(2) Members of the board may not hold any other public office.

(3) It is the intent of this section that the establishment of a civil service board is permissive and not mandatory. If appointed, the board may be abolished at any time upon resolution by the commission and the civil service board appointed under the provisions of this part ceases to exist. However, as long as a civil service board exists, its operations and proceedings must be controlled as provided in this part.

(4) The salaries of the board and its employees must be determined by the commission, and a sufficient sum must be appropriated each year to carry out the civil service provisions of this part.

History: **(1) thru (3)En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; Sec. 11-3272, R.C.M. 1947; (4)En. Sec. 86, Ch. 152, L. 1917; re-en. Sec. 5484, R.C.M. 1921; re-en. Sec. 5484, R.C.M. 1935; Sec. 11-3285, R.C.M. 1947; R.C.M. 1947, 11-3272(part), 11-3285; amd. Sec. 386, Ch. 61, L. 2007.**

7-3-4406. Organization of board. Immediately after appointment, the board shall organize by electing one of its members presiding officer. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint other subordinates as may be provided for by appropriation.

History: **En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; R.C.M. 1947, 11-3272(part); amd. Sec. 387, Ch. 61, L. 2007.**

7-3-4407. Classification of civil service. (1) The civil service of a municipality is hereby divided into the unclassified and the classified service.

(2) The unclassified service shall include:

(a) all officers elected by the people;

(b) the city manager;

(c) the heads of departments and heads of divisions of departments and members of appointive boards;

(d) the deputies and secretaries of the city manager and one assistant or deputy and one secretary for each department and the clerk of the commission.

(3) (a) The classified service shall comprise all positions not specifically included in this section in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the noncompetitive class, and the labor class.

(b) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination.

(c) The noncompetitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examinations will be given for these positions, but the past achievements of the applicant will be considered.

(d) The labor class shall include ordinary unskilled labor which is employed by the year.

History: En. Sec. 74, Ch. 152, L. 1917; re-en. Sec. 5472, R.C.M. 1921; re-en. Sec. 5472, R.C.M. 1935; R.C.M. 1947, 11-3273.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-3-4408. Role of civil service board. (1) The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law and shall make investigations concerning the enforcement and effect of this part and part 43 and of the rules adopted. It shall make an annual report to the commission.

(2) The board shall provide for promotion to all positions in the classified service based on records of merit, efficiency, character, conduct, and seniority.

History: (1)En. Sec. 75, Ch. 152, L. 1917; re-en. Sec. 5473, R.C.M. 1921; re-en. Sec. 5473, R.C.M. 1935; Sec. 11-3274, R.C.M. 1947; (2)En. Sec. 77, Ch. 152, L. 1917; re-en. Sec. 5475, R.C.M. 1921; re-en. Sec. 5475, R.C.M. 1935; Sec. 11-3276, R.C.M. 1947; R.C.M. 1947, 11-3274, 11-3276.

7-3-4409. Role of chief examiner. The chief examiner is the employment officer of all municipal employees coming under the classified service. The chief examiner shall provide examinations in accordance with the regulations of the board and maintain lists of eligibles for each class of the service of those meeting the requirements of the regulations. Positions in the classified service must be filled from the eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: En. Sec. 76, Ch. 152, L. 1917; re-en. Sec. 5474, R.C.M. 1921; re-en. Sec. 5474, R.C.M. 1935; R.C.M. 1947, 11-3275; amd. Sec. 388, Ch. 61, L. 2007.

7-3-4410. Probationary period. An appointment or promotion shall not be deemed complete until a period of probation, not to exceed 6 months, has elapsed; and a probationer may be discharged or reduced at any time within the period of 6 months upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: En. Sec. 78, Ch. 152, L. 1917; re-en. Sec. 5476, R.C.M. 1921; re-en. Sec. 5476, R.C.M. 1935; R.C.M. 1947, 11-3277.

7-3-4411. Procedure for discharge, demotion, or suspension of employee. (1) An employee may not be discharged or reduced in rank or compensation until the employee has been presented with the reasons for discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in the employee's own defense. The reason for discharge or reduction and any reply in writing to the reason by the employee must be filed with the board.

(2) Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager may appeal from the decision to the civil service board. The board shall define the manner, time, and place in which an appeal is heard. The judgment of the board is final.

History: (1)En. Sec. 79, Ch. 152, L. 1917; re-en. Sec. 5477, R.C.M. 1921; re-en. Sec. 5477, R.C.M. 1935; Sec. 11-3278, R.C.M. 1947; (2)En. Sec. 80, Ch. 152, L. 1917; re-en. Sec. 5478, R.C.M. 1921; re-en. Sec. 5478, R.C.M. 1935; Sec. 11-3279, R.C.M. 1947; R.C.M. 1947, 11-3278, 11-3279; amd. Sec. 389, Ch. 61, L. 2007.

7-3-4412. Retention of existing positions. Any person in the employ of a municipality holding a position in the classified service at the time that the municipality comes under the provisions of part 43 and this part shall, unless the person's position is abolished, retain the same position until discharged, reduced, promoted, or transferred in accordance with part 43 and this part.

History: **En. Sec. 81, Ch. 152, L. 1917; re-en. Sec. 5479, R.C.M. 1921; re-en. Sec. 5479, R.C.M. 1935; R.C.M. 1947, 11-3280; amd. Sec. 390, Ch. 61, L. 2007.**

7-3-4413. Certification required to receive salary. The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service unless the payroll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this part and part 43 or the rules established thereunder.

History: **En. Sec. 82, Ch. 152, L. 1917; re-en. Sec. 5480, R.C.M. 1921; re-en. Sec. 5480, R.C.M. 1935; R.C.M. 1947, 11-3281.**

7-3-4414. Investigatory powers of civil service board. In any investigation conducted by the board, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation and to administer oaths to such witnesses.

History: **En. Sec. 83, Ch. 152, L. 1917; re-en. Sec. 5481, R.C.M. 1921; re-en. Sec. 5481, R.C.M. 1935; R.C.M. 1947, 11-3282.**

Cross-References

Witnesses and subpoenas, Title 26, ch. 2.

7-3-4415. Prohibition on discrimination in employment. No person in the classified service or seeking admission thereto may be appointed, reduced, removed, or in any way favored or discriminated against because of political opinions or affiliations or because of race, color, creed, or religion.

History: **En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R.C.M. 1921; re-en. Sec. 5482, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1975; amd. Sec. 1, Ch. 38, L. 1977; R.C.M. 1947, 11-3283.**

Cross-References

Governmental code of fair practices, Title 2, ch. 2.

Illegal discrimination, Title 49, ch. 2.

7-3-4416. Violation of civil service provisions. The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violation of the civil service provisions of this part.

History: **En. Sec. 85, Ch. 152, L. 1917; re-en. Sec. 5483, R.C.M. 1921; re-en. Sec. 5483, R.C.M. 1935; R.C.M. 1947, 11-3284.**

Cross-References

Penalty when none specified, 46-18-212.

7-3-4417. Fixing compensation. (1) The commission shall fix, by annual salary ordinance, the salary or compensation of the city manager, the heads of the departments, and its own employees.

(2) The city manager shall fix the number and salaries or compensation of all other officers and employees.

(3) In cities where there is a civil service board as provided for in this part, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules adopted by the civil service board. All such salaries and rates of pay shall be reported to the secretary of the civil service board.

History: **En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; R.C.M. 1947, 11-3323(part).**

7-3-4418. Power to establish eight-hour day. The commission shall have the power to provide by ordinance that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed 8 hours shall constitute a day's work.

History: **En. Sec. 115, Ch. 152, L. 1917; re-en. Sec. 5512, R.C.M. 1921; re-en. Sec. 5512, R.C.M. 1935; R.C.M. 1947, 11-3328.**

Cross-References

Hours of work, Art. XII, sec. 2(2), Mont. Const.; 39-3-405.

Hours of work for municipal employees, 39-4-107.

7-3-4419 through 7-3-4430 reserved.

7-3-4431. Department of finance. (1) The duties of the director of finance include:

(a) the keeping and supervision of all accounts and the custody of all public money of the municipality;

(b) the purchase, storage, and distribution of supplies needed by the various departments;

(c) the making and collection of special assessments;

(d) the issuance of licenses;

(e) the collection of license fees and taxes; and

(f) other duties that the commission may by ordinance require.

(2) The director of finance shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts must be kept in the office of the department of finance. The director shall require daily departmental reports of money receipts and the disposition of money and shall require of each department, in a form that may be prescribed, current financial and operating statements exhibiting each transaction and the cost of the transaction. Upon the death, resignation, removal, or expiration of the term of any officer, the director shall examine the accounts of that officer and report the findings to the city manager.

(3) The director of finance has charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of the assessments to property owners and purchasers of property under contracts for deed and all other duties connected with the assessments, the collection of assessments that are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. The director shall issue all licenses and collect all license fees and shall deposit the fees into the treasury in the manner provided by ordinance.

(4) The director of finance is the custodian of all public money of the municipality and all other public money coming into the director's possession. The director shall keep and preserve the money in the place or places determined by ordinance or by the provisions of any applicable law. Except as otherwise provided in part 43 or this part, the director shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into the director's possession pursuant to regulations that may be prescribed by the authorities having lawful control over the funds.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(1) thru (3), (5), (7); amd. Sec. 4, Ch. 526, L. 1983; amd. Sec. 391, Ch. 61, L. 2007.

7-3-4432. Accounting procedures. Accounting procedures must be devised and maintained for the municipality that are adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The accounting procedures must conform to the methods and standards provided for in 2-7-504 and Title 7, chapter 6, part 6. The recorded facts must be presented periodically to officials and to the public in summaries and analytical schedules in detailed support of the summaries that may be necessary to show the full effect of the transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each publicly owned and operated utility.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(4); amd. Sec. 43, Ch. 278, L. 2001.

7-3-4433. Claims and issuance of warrants. A warrant for the payment of any claim may not be issued unless the claim is evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing a voucher, the supplies and materials delivered or work done must be inspected and certified to by the head of the proper department or office or by a person designated by the head of the department or office. The head of each department or office shall require proper time reports for all services rendered, to be certified by those having knowledge of the services, to serve as a basis for the preparation of payroll vouchers. Each director of a department and the director's surety are liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in the director's department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may cause an investigation or inspection to be made by a person designated by the director of finance and may summon persons and examine them under oath or affirmation, which oath or affirmation the director of finance may administer.

History: **En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(6); amd. Sec. 392, Ch. 61, L. 2007.**

7-3-4434. Purchase and sale of supplies and property. (1) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality and sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. The director of finance or city manager has charge of the storerooms and storehouses of the municipality that may be provided by ordinance, in which must be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(2) The director of finance or city manager shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and a voucher may not be honored unless the accompanying invoice is endorsed as approved.

(3) The director of finance or city manager may require from the director of each department, at times that contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(4) Upon certification that funds are available in the proper appropriations, the goods must be purchased and must be paid for from funds in the proper department for that purpose. However, this procedure may not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account to be furnished to the several departments on requisition. The goods must be paid for by the department to which the goods are furnished by warrant made payable to the stores account.

(5) The director of finance or city manager may not furnish any supplies to or purchase any supplies for any department unless the department has an available appropriation balance in excess of all unpaid obligations sufficient to pay for the supplies.

(6) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition. All proposals must be upon precise specifications and under rules established by the commission. Each order of purchase or sale must be approved and countersigned by the city manager or the deputy city manager.

(7) In cases of emergency, purchases may be made without competition if a sufficient appropriation has been made against which purchases may lawfully be charged. In those cases, a copy of the order issued must be filed with the director of finance, together with a certificate by the head of the department stating the facts of the emergency. A copy of this certificate must be attached to and filed with the voucher covering payment for the supplies. The director of finance shall employ assistants and employees that are necessary to properly carry out the director's duties under the provisions of part 43 and this part. If desirable, the director may divide the office into divisions presided over by an accountant, a treasurer, and a purchasing agent.

History: **En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(8) thru (13); amd. Sec. 393, Ch. 61, L. 2007.**

7-3-4435. Approval required for certain contracts. No contract involving an expenditure of more than $250 for material or supplies shall be awarded except upon the approval of the city manager and the commission.

History: **En. Sec. 71, Ch. 152, L. 1917; re-en. Sec. 5469, R.C.M. 1921; re-en. Sec. 5469, R.C.M. 1935; R.C.M. 1947, 11-3270.**

7-3-4436. Sinking fund trustees. (1) The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president and the director of finance shall be the secretary of the trustees of the sinking fund.

(2) The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of Montana or by ordinance.

History: **En. Sec. 69, Ch. 152, L. 1917; re-en. Sec. 5467, R.C.M. 1921; re-en. Sec. 5467, R.C.M. 1935; R.C.M. 1947, 11-3268.**

7-3-4437 through 7-3-4440 reserved.

7-3-4441. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall:

(1) manage and have charge of:

(a) the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways;

(b) sewers, drains, ditches, culverts, canals, streams, and watercourses; and

(c) boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds;

(2) manage market houses, sewage disposal plants and farms, and all public utilities of the municipality; and

(3) have charge of:

(a) the enforcement of all obligations of privately owned or operated public utilities enforceable by the municipality;

(b) the making and preservation of all surveys, maps, plans, drawings, and estimates for public work;

(c) the cleaning, sprinkling, and lighting of streets and public places;

(d) the collection and disposal of waste; and

(e) the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the department.

History: **En. Sec. 65, Ch. 152, L. 1917; re-en. Sec. 5463, R.C.M. 1921; re-en. Sec. 5463, R.C.M. 1935; R.C.M. 1947, 11-3264; amd. Sec. 394, Ch. 61, L. 2007.**

7-3-4442. Local improvements. (1) The commission shall have the power by ordinance to provide for:

(a) the construction, reconstruction, repair, and maintenance, by contract or directly by the employment of labor, of all things in the nature of local improvements; and

(b) the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law.

(2) Whenever the payments for such improvements are to extend over a period of years and are to be paid for in installments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of parts 41 and 42 of chapter 12.

History: **En. Sec. 87, Ch. 152, L. 1917; re-en. Sec. 5485, R.C.M. 1921; re-en. Sec. 5485, R.C.M. 1935; R.C.M. 1947, 11-3301.**

7-3-4443. Utility connections. (1) The director of public service may compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in the director's judgment be constructed.

(2) The director shall cause written notice of the determination to be given to the owner of each lot or parcel of land to which connections are to be made. The notice must state the number and character of connections required. The notice must be served by a person designated by the director of public service, in the manner provided for the service of summons in civil actions. Nonresidents of the municipality or persons who cannot be found may be served by one publication of the notice in a daily newspaper of general circulation in the municipality if there is a newspaper and, if not, by one publication in a weekly newspaper. The notice must state the time within which the connections must be constructed, and if they are not constructed within the time, the work may be done by the municipality and the cost of the connections, together with a penalty of 5%, assessed against the lots and lands for which the connections are made. However, the city commission may in its discretion order and direct that the cost of making any connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed 8 years, together with interest on the cost at a rate not to exceed 6% a year payable annually on the deferred payments. The assessments must be

certified and collected as other assessments for street improvements. The actual work of making the connections must be done under regulations that are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917; re-en. Sec. 5486, R.C.M. 1921; re-en. Sec. 5486, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1939; R.C.M. 1947, 11-3302; amd. Sec. 395, Ch. 61, L. 2007.

Cross-References

Municipal utilities regulation, Title 69, ch. 7.

7-3-4444. Supervision of plats. (1) The director of public service is the supervisor of plats of the municipality. The director shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever the director considers it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles of those limits, the director shall, if the plats are in accordance with the regulations prescribed for plats, endorse the director's written approval on the plats.

(2) A plat subdividing lands within the corporate limits or within 3 miles of those limits may not be entitled to be recorded in the recorder's office of the county without the written approval endorsed on the plat.

History: En. Sec. 91, Ch. 152, L. 1917; re-en. Sec. 5489, R.C.M. 1921; re-en. Sec. 5489, R.C.M. 1935; R.C.M. 1947, 11-3305; amd. Sec. 396, Ch. 61, L. 2007.

7-3-4445. Subdivided lands. Subdivisions in the municipality must conform to the provisions of Title 76, chapter 3.

History: En. Sec. 89, Ch. 152, L. 1917; re-en. Sec. 5487, R.C.M. 1921; amd. Sec. 16, Ch. 31, L. 1923; re-en. Sec. 5487, R.C.M. 1935; R.C.M. 1947, 11-3303; amd. Sec. 26, Ch. 262, L. 1979.

7-3-4446. Acceptance of streets or alleys. (1) No streets or alleys except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality or shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality or to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

(2) No street or alley hereafter dedicated to public use by the proprietor of ground in the municipality shall be deemed a public street or alley or under the care or control of the commission unless the dedication be accepted and confirmed by ordinance passed for such purpose or unless the provisions hereof relating to subdivisions shall have been complied with.

History: (1)En. Sec. 92, Ch. 152, L. 1917; re-en. Sec. 5490, R.C.M. 1921; re-en. Sec. 5490, R.C.M. 1935; Sec. 11-3306, R.C.M. 1947; (2)En. Sec. 95, Ch. 152, L. 1917; re-en. Sec. 5493, R.C.M. 1921; re-en. Sec. 5493, R.C.M. 1935; Sec. 11-3309, R.C.M. 1947; R.C.M. 1947, 11-3306, 11-3309.

7-3-4447. Supervision of public places. (1) The commission shall provide by ordinance for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipality and shall cause them to be kept open, in repair, and free from nuisance.

(2) When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: (1)En. Sec. 93, Ch. 152, L. 1917; re-en. Sec. 5491, R.C.M. 1921; re-en. Sec. 5491, R.C.M. 1935; Sec. 11-3307, R.C.M. 1947; (2)En. Sec. 94, Ch. 152, L. 1917; re-en. Sec. 5492, R.C.M. 1921; re-en. Sec. 5492, R.C.M. 1935; Sec. 11-3308, R.C.M. 1947; R.C.M. 1947, 11-3307, 11-3308.

7-3-4448. Vacating or changing name of street. (1) The commission, in vacating any street or part of a street or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue. Before vacating any street or part thereof or narrowing any street, the commission shall first pass a resolution declaring its intention to do so.

(2) The city manager shall serve notice of the resolution, in the manner that service of summons is required to be made in civil actions, upon all persons who are owners or purchasers under contracts for deed of property that abuts upon the portion of the street affected by the proposed vacation or narrowing and shall publish notice once in one daily newspaper of general

circulation in the municipality if there is one or if not, once in one weekly newspaper of like circulation. The notice shall state the time and place at which objections will be heard.

(3) Unless at least 51% of the affected property owners object to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing. The order of the commission vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, to the extent that it is vacated or narrowed, operates as a revocation of the acceptance thereof by the commission, but the right-of-way and easement therein of any lot owner is not impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917; re-en. Sec. 5494, R.C.M. 1921; re-en. Sec. 5494, R.C.M. 1935; R.C.M. 1947, 11-3310; amd. Sec. 27, Ch. 262, L. 1979; amd. Sec. 5, Ch. 526, L. 1983.

7-3-4449. Grant of right to use or occupy public places. The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed and remain on file with the commission for inspection by the public for at least 1 week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919; re-en. Sec. 5496, R.C.M. 1921; re-en. Sec. 5496, R.C.M. 1935; R.C.M. 1947, 11-3312.

7-3-4450. Renewal of franchises. The commission may by ordinance renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917; re-en. Sec. 5497, R.C.M. 1921; re-en. Sec. 5497, R.C.M. 1935; R.C.M. 1947, 11-3313.

7-3-4451. Prohibition on exclusive grant or franchise. No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before 2 years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5498, R.C.M. 1921; re-en. Sec. 5498, R.C.M. 1935; R.C.M. 1947, 11-3314.

7-3-4452. Grant to operate public utility. (1) The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

(2) The commission may by ordinance grant to any individual, company, or corporation operating a public utility the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extension shall expire with the original grant of the utility to which the extension was made or any renewal thereof.

(3) No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal unless such public utility is of such character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: (1)En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5499, R.C.M. 1921; re-en. Sec. 5499, R.C.M. 1935; Sec. 11-3315, R.C.M. 1947; (2)En. Sec. 103, Ch. 152, L. 1917; re-en. Sec. 5500, R.C.M. 1921; re-en. Sec. 5500, R.C.M. 1935; Sec. 11-3316, R.C.M. 1947; (3)En. Sec. 104, Ch. 152, L. 1917; re-en. Sec. 5501, R.C.M. 1921; re-en. Sec. 5501, R.C.M. 1935; Sec. 11-3317, R.C.M. 1947; R.C.M. 1947, 11-3315, 11-3316, 11-3317.

7-3-4453. Assessments for snow, ice, weed, and rubbish removal. The commission shall have the power to provide by ordinance for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice and for assessing against the property the cost of cutting and removing therefrom nuisance weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917; re-en. Sec. 5513, R.C.M. 1921; re-en. Sec. 5513, R.C.M. 1935; R.C.M. 1947, 11-3329; amd. Sec. 25, Ch. 607, L. 1985.

Cross-References

County weed control, Title 7, ch. 22, part 21.

7-3-4454 through 7-3-4460 reserved.

7-3-4461. Department of law. (1) The head of the department of law must be an attorney who has been admitted to practice in the state of Montana and must be known as the city attorney.

(2) The department head is the legal adviser of and attorney and counsel for the municipality and for all the officers and departments of the municipality in matters relating to their official duties. The department head shall prosecute and defend all suits for and in behalf of the municipality and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned and shall endorse on each an approval of the form and correctness of the documents.

(3) The department head shall employ the number of assistants that the commission may authorize by ordinance.

History: En. Sec. 64, Ch. 152, L. 1917; re-en. Sec. 5462, R.C.M. 1921; re-en. Sec. 5462, R.C.M. 1935; R.C.M. 1947, 11-3263; amd. Sec. 397, Ch. 61, L. 2007.

7-3-4462. Office of city judge. (1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

History: (1)En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R.C.M. 1921; amd. Sec. 14, Ch. 31, L. 1923; re-en. Sec. 5470, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1977; Sec. 11-3271, R.C.M. 1947; (2)En. 11-3271.1 by Sec. 2, Ch. 219, L. 1977; Sec. 11-3271.1, R.C.M. 1947; (3)En. 11-3271.3 by Sec. 4, Ch. 219, L. 1977; Sec. 11-3271.3, R.C.M. 1947; R.C.M. 1947, 11-3271, 11-3271.1, 11-3271.3.

Cross-References

City Court, Title 3, ch. 11.

7-3-4463. Department of public welfare. (1) Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality and the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. The director has charge of the inspection and supervision of public amusements and entertainments. The director shall enforce all laws, ordinances, and regulations relating to:

(a) the preservation and promotion of the public health;

(b) the prevention and restriction of disease;

(c) the prevention, abatement, and suppression of nuisances; and

(d) the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs.

(2) The director shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic or threatened epidemic, the director may enforce quarantine regulations that are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, disease, and other social problems in the community and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters that affect the public welfare.

(3) The health officer of the municipality is under the direction and control of the director of public welfare, shall enforce all ordinances and laws relating to health, and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers. Regulations affecting the public health in addition to those established by general law and for the violation of which penalties are imposed must be enacted by the commission and enforced as provided in this part.

History: En. Sec. 66, Ch. 152, L. 1917; re-en. Sec. 5464, R.C.M. 1921; re-en. Sec. 5464, R.C.M. 1935; R.C.M. 1947, 11-3265; amd. Sec. 398, Ch. 61, L. 2007.

Cross-References

Local boards of health, Title 50, ch. 2.

7-3-4464. Department of public safety. (1) Subject to the supervision and control of the city manager in all matters, the director of public safety is the executive head of the division of police and fire. The director is also the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as prescribed by the commission or established by the general law of Montana. The director is also charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) This section does not affect, impair, restrict, or repeal any provisions of general law authorizing the levying of taxes to provide for firefighters, police, and sanitary police pension funds and to create and perpetuate boards of trustees for the administration of those funds.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(1), (6); amd. Sec. 399, Ch. 61, L. 2007.

Cross-References

Weights and measures, Title 30, ch. 12.

Building inspection, Title 50, ch. 60.

7-3-4465. Police department. (1) The chief of police has exclusive control of the stationing and transfer of all patrol officers and other officers and employees constituting the police force, under rules that the director of public safety may prescribe. The police force must be composed of a chief of police and officers, patrol officers, and other employees that the city manager may determine. In the case of a riot, in the event of an emergency, or at the time of elections or similar occasions, the director of public safety may appoint additional patrol officers and officers for temporary service who need not be in the classified service.

(2) A person may not act as a special detective or special police officer for any purpose whatsoever except upon the written authority of the director of public safety. The written authority may be exercised only under the direction and control of the chief of police and for a specified time.

(3) Title 7, chapter 32, parts 2 and 41, and Title 19, chapters 9 and 19, are in all respects applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for in this part.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 400, Ch. 61, L. 2007; amd. Sec. 1, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (2) in second sentence substituted "may be exercised" for "must be exercised"; in (3) at beginning deleted "Section 7-4-4202(1) and (4)"; and made minor changes in style. Amendment effective October 1, 2009.

7-3-4466. Fire department. (1) The fire chief shall have exclusive control of the stationing and transfer of all firefighters and other officers and employees constituting the fire force, under such rules as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firefighters, and employees as the city manager may from time to time determine. In case of riot, conflagration, or emergency, the director of public safety may appoint additional firefighters and other officers for temporary service, who need not be in the classified service.

(2) The provisions of part 41 of chapter 33 and chapter 18 of Title 19 shall in all respects be applicable to and govern fire departments of all cities and towns operating under the commission-manager plan of government.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part).

CHAPTER 4
OFFICERS AND EMPLOYEES

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Part 46 — Office of City Attorney

7-4-4601. Qualifications for city attorney.
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Part 47 — Office of City Treasurer

7-4-4701. Term of office for city treasurer.

Part 1
General Provisions

7-4-101. Filing of oath of office. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) in the office of the secretary of state for all officers whose authority is not limited to any particular county;

(2) in the office of the clerk of the respective county for all elected or appointed officers for any county, all officers whose duties are local or whose residence in any particular county is prescribed by law, and the clerks of the district courts.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; R.C.M. 1947, 59-417(part).

Cross-References

Oaths — form — before whom — when, 2-16-211.

7-4-102. Office hours. (1) Unless otherwise provided by law, each officer shall keep the officer's office open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer each day except Saturdays and legal holidays.

(2) County and city treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

(3) The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part); amd. Sec. 1, Ch. 2, Sp. L. June 1989; amd. Sec. 2, Ch. 216, L. 1995.

Cross-References

County offices, 7-4-2211.

Parts 2 through 4 reserved

Part 5
Local Government Employee Incentive Award Program

7-4-501. Establishment of program — award value limited. (1) A governing body may develop and administer an employee incentive award program to appropriately recognize and monetarily reward local government employees in a timely manner for:

(a) suggestions or inventions that contribute to the efficiency, economy, or other improvement of local government by reducing costs of governmental operations; or

(b) participation in or successful completion of a program designed to improve employee health or enhance employee safety.

(2) An award to an individual under this part may not exceed $50 in value.

History: En. Sec. 2, Ch. 87, L. 1991; amd. Sec. 1, Ch. 122, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 122 inserted (1)(b) concerning participation in health or safety programs; inserted (2) limiting the amount of the award; and made minor changes in style. Amendment effective April 1, 2009.

7-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any office, board, bureau, commission, or department operated by a local government.

(2) "Governing body" means the legislative authority of a local government.

(3) "Local government" means any city, town, county, consolidated city-county, or school district.

History: En. Sec. 1, Ch. 87, L. 1991.

7-4-503. Powers and duties of governing body. A governing body shall:

(1) adopt regulations to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council if there is such a council;

(5) determine the amount of each incentive award;

(6) designate the source of funding for the awards; and

(7) hear appeals from employees on the operation of the program.

History: En. Sec. 3, Ch. 87, L. 1991.

7-4-504. Appointment and functions of advisory council — governing body as advisory council. (1) The governing body may appoint an incentive awards advisory council. Members of the advisory council must be selected from a diverse group to adequately represent employees.

(2) The advisory council shall meet regularly and consult with the governing body to review all proposed incentive awards and to recommend granting or rejecting proposed awards.

(3) The governing body may serve as the incentive awards advisory council in lieu of appointing a separate council.

History: En. Sec. 4, Ch. 87, L. 1991.

7-4-505. Eligibility for award. (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if:

(a) the employee's suggestion or invention results in eliminating or reducing an agency's expenditures or improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations; or

(b) the employee participates in or successfully completes a program designed to improve employee health or enhance employee safety.

(2) (a) An employee may not be eligible for an incentive award under subsection (1)(a) if the employee's suggestion or invention directly relates to the employee's assigned duties and responsibilities unless the proposal warrants special recognition as determined by the governing body.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

History: En. Sec. 5, Ch. 87, L. 1991; amd. Sec. 401, Ch. 61, L. 2007; amd. Sec. 2, Ch. 122, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 122 inserted (1)(b) concerning participation in health or safety programs; near beginning of (2)(a) following "award" inserted "under subsection (1)(a)" and following "proposal" substituted "warrants" for "is so superior or meritorious as to warrant"; and made minor changes in style. Amendment effective April 1, 2009.

7-4-506. Agency head to grant award. After an agency implements an employee's suggestion or invention and the amount of monetary savings to the local government is estimated or an employee participates in or successfully completes a health or safety program, an agency head, upon written application to and approval from the governing body and the incentive awards advisory council, if there is a council, may grant an incentive award to an employee whose proposal or activity meets the requirements of 7-4-505.

History: En. Sec. 6, Ch. 87, L. 1991; amd. Sec. 3, Ch. 122, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 122 near middle following "estimated" inserted language concerning participation in health or safety programs and near end after "proposal" inserted "or activity"; and made minor changes in style. Amendment effective April 1, 2009.

Parts 6 through 20 reserved

Part 21
County Commissioners

7-4-2101. Composition of board of county commissioners. Each county may have a board of county commissioners consisting of three members or any other number provided for under any of the forms of government allowed under Title 7, chapter 3.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part); amd. Sec. 2, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 inserted "or any other number provided for under any of the forms of government allowed under Title 7, chapter 3". Amendment effective October 1, 2009.

7-4-2102. Division of county into commissioner districts. (1) In each county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into as many commissioner districts as there are county commissioners and ensure that the districts are as compact and equal in population and area as possible. The apportionment may take place at any time for the purpose of equalizing in population and area the commissioner districts. However, a commissioner district may not at any time be changed to affect the term of office of any county commissioner who has been elected. A change in the boundaries of any commissioner district must be made within 6 months preceding a primary election.

(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not the action meets the requirements of this section.

History: (1), (2)En. 16-902.1 by Sec. 1, Ch. 298, L. 1974; Sec. 16-902.1, R.C.M. 1947; (3)En. 16-902.5 by Sec. 5, Ch. 298, L. 1974; Sec. 16-902.5, R.C.M. 1947; R.C.M. 1947, 16-902.1, 16-902.5; amd. Sec. 1, Ch. 182, L. 1983; amd. Sec. 3, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) in first sentence near middle substituted "into as many commissioner districts as there are county commissioners and ensure that the districts are as compact" for "into three commissioner districts as compact" and in fourth sentence at beginning substituted "A change" for "No change"; deleted former (3) that read: "(3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law"; and made minor changes in style. Amendment effective October 1, 2009.

7-4-2103. Filing of certificate designating districts. When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county a certificate designating the metes and bounds of the boundary lines and limits of each commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

History: En. 16-902.2 by Sec. 2, Ch. 298, L. 1974; R.C.M. 1947, 16-902.2.

7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected must be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of the member or members of the board must be submitted to the entire electorate of the county unless otherwise provided for under:

(a) a plan of government provided for in a county adopting an optional or alternative form of government; or

(b) a court order.

(2) A person may not be elected as a member of a board of county commissioners unless the person has resided in the county and the district for at least 2 years preceding the general election.

History: En. 16-902.3 by Sec. 3, Ch. 298, L. 1974; R.C.M. 1947, 16-902.3; amd. Sec. 1, Ch. 224, L. 1987; amd. Sec. 1, Ch. 183, L. 2001; amd. Sec. 4, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) after "of the county" inserted "unless otherwise provided for under"; inserted (1)(a) and (1)(b) regarding plan and court order; and made minor changes in style. Amendment effective October 1, 2009.

7-4-2105. Term of office. (1) The term of office of county commissioners is 6 years unless otherwise provided for under a plan of government provided for in a county adopting an optional or alternative form of government. A county commissioner takes office at 12:01 a.m. on January 1 succeeding the date of the election at which the county commissioner was elected.

(2) A county commissioner elected to take office shall take the oath of office on or before the last business day of December following the commissioner's election, except as provided for in 7-4-2106.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part); amd. Sec. 4, Ch. 220, L. 1985; amd. Sec. 1, Ch. 421, L. 1997; amd. Sec. 1, Ch. 131, L. 2007; amd. Sec. 5, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) in first sentence inserted "unless otherwise provided for under a plan of government provided for in a county adopting an optional or alternative form of government". Amendment effective October 1, 2009.

7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921; re-en. Sec. 4454, R.C.M. 1921; Cal. Pol. C. Sec. 4026; re-en. Sec. 4454, R.C.M. 1935; R.C.M. 1947, 16-903; amd. Sec. 2, Ch. 526, L. 1979; amd. Sec. 14, Ch. 250, L. 1985; amd. Sec. 1, Ch. 551, L. 1985; amd. Sec. 32, Ch. 42, L. 1997; amd. Sec. 1, Ch. 219, L. 2007.

Cross-References

Date of general elections, 13-1-104.

7-4-2107. Compensation of county commissioners. (1) Subject to subsection (2), each member of the board of county commissioners shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000.

(2) Each board may elect to serve on a part-time rather than a full-time basis and receive part-time annual salaries based on the annual salary established in 7-4-2503(1)(a) for the clerk and recorder.

(3) This section does not apply to counties that have adopted a charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 2, Ch. 518, L. 1981; amd. Sec. 1, Ch. 264, L. 1985; amd. Sec. 2, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 527, L. 1991; amd. Sec. 1, Ch. 28, L. 1993; amd. Sec. 2, Ch. 507, L. 2001.

Cross-References

Classification of counties, 7-1-2111.

7-4-2108. Mileage allowance for county commissioners — expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners must receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and the commissioner's place of residence each day that the trip is actually made and while engaged in the performance of official duties.

(2) A county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than one day in the county seat to attend sessions of the board or perform official duties is entitled to receive, in addition to mileage for one round trip between the commissioner's place of residence and the county seat, the rate for lodging established in Title 2, chapter 18, part 5, or the amount calculated in this section for mileage, whichever is less, as expenses for each day's attendance on sessions of the board while engaged in the performance of official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the rate for noncommercial, nonreceiptable lodging established in Title 2, chapter 18, part 5, is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, reimbursement may not be claimed for lodging.

(5) This section does not apply to counties that have adopted a charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 1, Ch. 370, L. 1979; amd. Sec. 402, Ch. 61, L. 2007; amd. Sec. 6, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) after "county commissioners" deleted "in counties of the first, second, third, and fourth class"; in (2) deleted former first sentence that read: "Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and the commissioner's place of residence each day that the trip is actually made to perform official duties" and near end after "county seat" substituted "the rate for lodging established in Title 2, chapter 18, part 5, or the amount calculated in this section for mileage, whichever is less" for "$18 per day"; in (4) in first sentence after "commissioner" substituted "the rate for noncommercial, nonreceiptable lodging established in Title 2, chapter 18, part 5" for "the amount of $7"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Classification of counties, 7-1-2111.

7-4-2109. Presiding officer of board. The board of county commissioners must elect one of its members presiding officer. The presiding officer shall preside at all meetings of the board, and in case of the presiding officer's absence or inability to act, the members present shall select one of their number to act temporarily as presiding officer.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part); amd. Sec. 403, Ch. 61, L. 2007.

7-4-2110. Supervision of county and other officers. The board of county commissioners has jurisdiction and power, under the limitations and restrictions that are prescribed by law, to:

(1) supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing, or disbursing public revenue;

(2) see that the officers faithfully perform their duties;

(3) direct prosecutions for delinquencies;

(4) when necessary, require the officers to renew their official bonds, make reports, and present their books and accounts for inspection; and

(5) require the officers to supervise staff in a manner that complies with personnel policies and procedures adopted by the county governing body.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part); amd. Sec. 1, Ch. 112, L. 2003.

Cross-References

Inspection of official bonds, 7-4-2213.

7-4-2111. Indemnity insurance for county officers. The board of county commissioners may pay a proper charge to any insurance company authorized to do business in this state or to a self-insurance pool insuring counties as authorized by 2-9-211 for insurance providing indemnity for or protection to any county officer against liability for the loss, without fault, connivance, or neglect on the officer's part, of money, securities, or other property for which the officer is accountable to the county.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part); amd. Sec. 404, Ch. 61, L. 2007; amd. Sec. 7, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 following "this state" inserted "or to a self-insurance pool insuring counties as authorized by 2-9-211"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Purchase of surety bonds by county, 2-9-703, 2-9-704.

7-4-2112. County seal. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to adopt a seal for the board. A description and impression thereof must be filed by the clerk in the offices of the county clerk and the secretary of state.

History: En. Subd. 24, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.23, R.C.M. 1935; R.C.M. 1947, 16-1026.

7-4-2113. Liability on official bond of commissioner. In addition to any other penalty provided in this code, a county commissioner who neglects or refuses to perform any duty imposed on the commissioner without just cause, who willfully violates any law provided for the commissioner's government as an officer, who fraudulently or corruptly performs any duty imposed on the commissioner, or who willfully, fraudulently, or corruptly attempts to perform an act unauthorized by law as commissioner forfeits to the county $500 for every act, to be recovered on the commissioner's official bond, and is further liable on the official bond to any person injured by the act for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907; re-en. Sec. 4520, R.C.M. 1921; Cal. Pol. C. Sec. 4086; re-en. Sec. 4520, R.C.M. 1935; R.C.M. 1947, 16-1161; amd. Sec. 405, Ch. 61, L. 2007.

Cross-References

Proceedings on bonds, 2-9-501.
Official misconduct, 45-7-401.

Part 22
County Officers in General

7-4-2201. General qualifications for county office. A person is not eligible for a county office who at the time of election is not:

(1) of the voting age required by the Montana constitution;

(2) a citizen of the state; and

(3) (a) an elector of the county in which the duties of the office are to be exercised; or

(b) in the case of an office consolidated between two or more counties, an elector in one of the counties in which the duties of the office are to be exercised.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; Cal. Pol. C. Sec. 4101; re-en. Sec. 4723, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1971; R.C.M. 1947, 16-2401; amd. Sec. 1, Ch. 60, L. 1999.

Cross-References

Voting age, Art. II, sec. 14, Mont. Const.
Elector, Art. IV, sec. 2, Mont. Const.
Citizen of state, 1-1-402.

7-4-2202. General qualifications for district or township offices. A person is not eligible to a district or township office unless the person is:

(1) of voting age as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the district or township in which the duties of the office are to be exercised or for which the person is elected.

History: **En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; Cal. Pol. C. Sec. 4102; re-en. Sec. 4724, R.C.M. 1935; amd. Sec. 2, Ch. 423, L. 1971; R.C.M. 1947, 16-2402; amd. Sec. 406, Ch. 61, L. 2007.**

Cross-References

Voting age, Art. II, sec. 14, Mont. Const.; Art. IV, sec. 2, Mont. Const.
Elector, Art. IV, sec. 2, Mont. Const.; 13-1-111.
Residence, 13-1-112.

7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and other qualifications as may be prescribed by law:

(a) one county attorney;
(b) one clerk of the district court;
(c) one county clerk;
(d) one sheriff;
(e) one treasurer;
(f) one auditor if authorized by 7-6-2401;
(g) one county superintendent of schools;
(h) one county surveyor;
(i) one assessor;
(j) one coroner;
(k) one public administrator; and
(l) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. More than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law.

History: **En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 443, L. 1979; amd. Sec. 1, Ch. 228, L. 1989.**

Cross-References

Constitutional listing of possible county officers, Art. XI, sec. 3(2), Mont. Const.

7-4-2204. Township officers. The officers of townships are as provided elsewhere in this code or by the board of county commissioners.

History: **En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R.C.M. 1921; Cal. Pol. C. Sec. 4104; re-en. Sec. 4726, R.C.M. 1935; amd. Sec. 10, Ch. 491, L. 1973; amd. Sec. 2, Ch. 253, L. 1975; R.C.M. 1947, 16-2404.**

7-4-2205. Term of office — oath. (1) Each person elected to an office named in 7-4-2203 holds the office for the term of 4 years and until a successor is elected and qualified.

(2) A person appointed to any of the different offices serves at the pleasure of the commissioners.

(3) Each officer who is mentioned in this part and who is elected to office shall:

(a) take the oath of office on or before the last business day of December following the officer's election; and

(b) take office at 12:01 a.m. on January 1 following the officer's election.

History: **En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 71, L. 1983; amd. Sec. 2, Ch. 421, L. 1997; amd. Sec. 2, Ch. 131, L. 2007.**

7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, must be filled by appointment by the board of county commissioners. Except as provided in subsections (3) through (5), the appointee holds the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the office is not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day before the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace must be filled as provided in Title 3, chapter 10, part 2.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 3, Ch. 526, L. 1979; amd. Sec. 15, Ch. 250, L. 1985; amd. Sec. 33, Ch. 42, L. 1997; amd. Sec. 1, Ch. 226, L. 1997.

Cross-References

Vacancy — County Commissioner, 7-4-2106.

General election dates, 13-1-104.

7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices prior to the time of the expiration of their respective terms. If any officer, at the close of the term, leaves to the officer's successor official labor to be performed for which the officer has received compensation or that it was the officer's duty to perform, the officer is liable to pay to the successor the full value of the services, which may be recovered in any court of competent jurisdiction upon action brought against the officer on the officer's official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R.C.M. 1921; re-en. Sec. 4905, R.C.M. 1935; R.C.M. 1947, 25-221; amd. Sec. 407, Ch. 61, L. 2007.

Cross-References

Action on official bonds, Title 2, ch. 9, part 5.

7-4-2208. Absence of county officers from state. (1) Subject to subsection (2) and except as provided in 10-1-1008, if a county officer is absent from the state for a period of more than 30 consecutive days without the consent of the board of county commissioners, the officer forfeits the office.

(2) If the county officer who is seeking consent to be absent from the state for more than 30 consecutive days is a member of the board of county commissioners, the officer may participate in the vote on the question of providing consent for the absence.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R.C.M. 1921; Cal. Pol. C. Sec. 4120; re-en. Sec. 4739, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1947; R.C.M. 1947, 16-2417; amd. Sec. 1, Ch. 232, L. 1991; amd. Sec. 21, Ch. 381, L. 2005; amd. Sec. 1, Ch. 123, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 123 in (1) near middle substituted "more than 30 consecutive days" for "more than 60 days or for a period longer than 15 days"; substituted (2) relating to participation in a vote concerning a commissioner's absence for "The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices"; and made minor changes in style. Amendment effective April 1, 2009.

7-4-2209. Authority to administer oaths. Every officer mentioned in 7-4-2203(1) may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R.C.M. 1921; Cal. Pol. C. Sec. 4118; re-en. Sec. 4738, R.C.M. 1935; R.C.M. 1947, 16-2416; amd. Sec. 2, Ch. 443, L. 1979.

7-4-2210. Restriction on practice of law by certain officers. (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as a lawyer.

(2) A county clerk, clerk of any court, or sheriff may not act as an agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during the person's continuance in office.

History: (1)En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R.C.M. 1921; Cal. Pol. C. Sec. 4121; re-en. Sec. 4740, R.C.M. 1935; Sec. 16-2418, R.C.M. 1947; (2)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; R.C.M. 1947, 16-2418, 93-902(part); amd. Sec. 408, Ch. 61, L. 2007.

Cross-References

Supreme Court jurisdiction — conduct of bar, Art. VII, sec. 2, Mont. Const.

Practice of law, Title 37, ch. 61.

7-4-2211. County offices. (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties in which that officer is maintained, and the county assessor shall keep their offices open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer, every day in the year except legal holidays and Saturdays.

(b) This subsection (2) does not apply to counties operating under the county manager plan.

History: (1)En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4735, R.C.M 1935; amd. Sec. 2, Ch. 276, L. 1974; Sec. 16-2413, R.C.M. 1947; (2)En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; Sec. 16-2414, R.C.M. 1947; R.C.M. 1947, 16-2413, 16-2414(part); amd. Sec. 3, Ch. 216, L. 1995.

Cross-References

Office hours, 7-4-102.

7-4-2212. Official bonds of county officers. (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.

(2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: (1)New section recommended by Code Commissioner, 1921; re-en. Sec. 4743, R.C.M. 1935; Sec. 16-2421, R.C.M. 1947; (2)En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R.C.M. 1921; Cal. Pol. C. Sec. 4117; re-en. Sec. 4737, R.C.M. 1935; Sec. 16-2415, R.C.M. 1947; R.C.M. 1947, 16-2415, 16-2421.

7-4-2213. Inspection of official bonds. (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties on the bonds and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members of the board that any surety upon any bond has, since the approval and acceptance of the bond, died or withdrawn, left the state, disposed of all of the surety's property in this state, or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of the liability on the bond, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection with and the reasons for the action.

(3) The judge shall take notice of and investigate the matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make the bond good and sufficient according to the requirements of law and ample security for the amount of the bond.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R.C.M. 1921; re-en. Sec. 4744, R.C.M. 1935; R.C.M. 1947, 16-2422; amd. Sec. 3, Ch. 443, L. 1979; amd. Sec. 409, Ch. 61, L. 2007.

Cross-References

Bonds of county officers and employees, Title 2, ch. 9, part 7.

7-4-2214 through 7-4-2220 reserved.

7-4-2221. Manner of keeping records and storing documents. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in the officer's office, the officer may do so by photographic, micrographic, electronic, or other mechanical process that produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by national standards.

History: (1)En. Sec. 1, Ch. 117, L. 1959; Sec. 16-2428, R.C.M. 1947; (2)En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; R.C.M. 1947, 16-2428, 16-2902(part); amd. Sec. 7, Ch. 420, L. 1993.

7-4-2222. Substitution of reproduction for original document. (1) Any document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221 can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted as public records.

(2) The copy of any record destroyed or disposed of as authorized in this section or a certified copy thereof is admissible as evidence in any court or proceeding and has the same force and effect as though the original record had been produced and proved.

(3) It is the duty of the custodian of the records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: (1)En. Sec. 2, Ch. 117, L. 1959; Sec. 16-2429, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 117, L. 1959; Sec. 16-2430, R.C.M. 1947; R.C.M. 1947, 16-2429, 16-2430; amd. Sec. 8, Ch. 420, L. 1993.

7-4-2223. Duplicate records — safe storage of one copy. (1) Whenever any record or document is copied or reproduced as provided in 7-4-2221, it must be made in duplicate.

(2) The custodian of the record or document shall place the master copy, the contents of the copy being first identified and indexed, in a fireproof vault or fireproof storage place. The custodian shall retain the other copy in the office with suitable equipment for reproducing the record or document for persons entitled to the record or document.

History: En. Sec. 4, Ch. 117, L. 1959; R.C.M. 1947, 16-2431; amd. Sec. 9, Ch. 420, L. 1993.

Part 23
Consolidation of County Offices

Part Cross-References

Forms of government — consolidation of offices, Art. XI, sec. 3, Mont. Const.

7-4-2301. Authorization to consolidate county offices. (1) Except as provided in subsection (2), the board of county commissioners of any county may in its discretion consolidate any two or more of the offices named in 7-4-2203 and combine the powers and the duties of the consolidated offices.

(2) The office of the justice of the peace may not be combined or consolidated with any other office other than another justice of the peace office.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 4, Ch. 443, L. 1979.

7-4-2302. Petition for consolidation of county offices. (1) At any time not later than 45 days before the date on which declarations for nomination may first be filed for any county office, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of such county.

(2) The petition shall be signed by not less than 15% of the registered electors of such county.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part); amd. Sec. 1, Ch. 101, L. 1987.

Cross-References

Date of general election, 13-1-104.

7-4-2303. Petition for intercounty consolidation of offices. (1) A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties.

(2) In the case of consolidation of offices among several counties, the petition shall be signed by not less than 15% of the registered electors in each of the counties affected.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part); amd. Sec. 2, Ch. 101, L. 1987.

7-4-2304. Petition details. (1) A petition for consolidation of offices must be addressed to the board or boards of county commissioners of the counties affected and must set forth and state the reasons why the consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing the petition shall place the person's printed last name, post-office address, and voting precinct after the signature.

(3) For purposes of determining the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors must be the number of individuals registered to vote at the preceding general election for the county.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part); amd. Sec. 3, Ch. 101, L. 1987; amd. Sec. 410, Ch. 61, L. 2007.

7-4-2305. Initiation of consolidation by county commissioners. (1) The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this part. Any board or boards desiring to consolidate any two or more offices or any two or more offices among several counties under the provisions of this part shall first pass a resolution stating the intent of the board or boards to consider consolidation.

(2) Nothing contained herein shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this part.

History: (1)En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973; Sec. 16-2501.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 125, L. 1935; re-en. Sec. 4749.4, R.C.M. 1935; amd. Sec. 8, Ch. 100, L. 1973; Sec. 16-2504, R.C.M. 1947; R.C.M. 1947, 16-2501.1, 16-2504.

7-4-2306. Processing of petition — resolution of intent and hearing. (1) Upon the filing of a petition for consolidation, the board or boards of county commissioners shall cause the county clerk or clerks to examine the petition and the registration records of the county or counties.

(2) If after such examination the county clerk or clerks report to the board or boards of county commissioners that the petition has been signed by not less than 15% of the registered electors of the county, the board or boards shall set a date for a hearing and pass a resolution of intent to consider the consolidation. Upon passage of the resolution of intent by the board or boards, proper notice shall be given for the hearing. The date for the hearing may not be more than 20 days after the filing of the petition or the passage of the resolution of intent.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part); amd. Sec. 5, Ch. 443, L. 1979; amd. Sec. 4, Ch. 101, L. 1987.

7-4-2307. Notice of hearing. The county clerk or clerks shall cause notice of the hearing required by 7-4-2306 to be published as provided in 7-1-2121.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part); amd. Sec. 5, Ch. 349, L. 1985.

7-4-2308. Joint hearings. Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings, provided the proper notice is given in each of the counties affected as set forth in 7-4-2306 and 7-4-2307.

History: En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973; R.C.M. 1947, 16-2502.1.

7-4-2309. Conduct of hearing — decision. (1) At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any registered elector of the county affected shall have the right to appear and be heard upon said petition, subject, however, to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing.

(2) Within 5 days after the date set for said hearing, the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper. Such order must be made at least 7 days before the date on which declarations for nomination may first be filed for any county office.

History: **En. Sec. 3, Ch. 125, L. 1935; re-en. Sec. 4749.3, R.C.M. 1935; amd. Sec. 5, Ch. 458, L. 1973; R.C.M. 1947, 16-2503; amd. Sec. 5, Ch. 101, L. 1987.**

7-4-2310. Order for consolidation of offices. (1) In consolidating county offices, the board of county commissioners shall, not less than 7 days before the date on which declarations for nomination may first be filed for any office to be consolidated or not less than 6 months prior to the appointment to the offices to be consolidated, make and enter an order combining any two or more of the within-named offices.

(2) Whenever an order consolidating two or more offices is made, the order shall be entered in full on the board's minutes of proceedings.

(3) The order shall be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and entering of the order.

History: **Ap. p. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; Sec. 16-2406, R.C.M. 1947; Ap. p. Sec. 5, Ch. 125, L. 1935; re-en. Sec. 4749.5, R.C.M. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973; Sec. 16-2505, R.C.M. 1947; R.C.M. 1947, 16-2406(part), 16-2505; amd. Sec. 6, Ch. 443, L. 1979; amd. Sec. 6, Ch. 101, L. 1987.**

7-4-2311. Implementation of consolidation order. (1) Whenever any such order is made consolidating two or more of such offices, it shall be the duty of the officers holding and occupying such offices, at the end of their terms of office, to deliver and transfer to their successor or successors all of the books, files, papers, documents, maps, plats, and records of such offices.

(2) The officer or officers receiving the same shall make and deliver proper receipts therefor and shall thereafter:

(a) be the custodian or custodians of such books, files, papers, documents, maps, plats, and records;

(b) perform all of the duties and acts imposed on such consolidated offices as required of them by law; and

(c) make and execute, with full legal force and effect, all certificates, official statements, official reports, affidavits, and other instruments required to be made by the laws of this state by either or any of the officers whose offices have been so consolidated.

(3) If the laws of this state or the rules, regulations, orders, or directions of any officer or department of the state shall require each of two offices which are consolidated to keep duplicate or similar records, books, or accounts, after such consolidation, such consolidated office shall keep but one set of such records, books, or accounts.

History: **En. Sec. 6, Ch. 125, L. 1935; re-en. Sec. 4749.6, R.C.M. 1935; R.C.M. 1947, 16-2506.**

7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, the officer must receive a salary determined by the board or boards of county commissioners. However, the salary may not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties the officer is required to perform by reason of the consolidations.

(b) The board or boards shall, in conjunction with setting elected officials' salaries as provided in 7-4-2503, annually adopt a resolution fixing the percentage adjustment of the salary of the officer holding the consolidated office for the term beginning with the first Monday in January immediately following the adoption of the resolution.

(2) The officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties the officer is required to perform by reason of the consolidation of offices.

History: **En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part); amd. Sec. 411, Ch. 61, L. 2007; amd. Sec. 8, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 in (1)(b) after "boards shall" substituted "in conjunction with setting elected officials' salaries as provided in 7-4-2503, annually adopt a resolution fixing the percentage adjustment of the salary of the officer holding the consolidated office" for "in June of each fourth year, adopt a resolution fixing the salary of the officer"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Bonds of county officers and employees, Title 2, ch. 9, part 7.

Compensation of county officers, 7-4-2501.

7-4-2313. Deputies and personnel for consolidated offices. (1) Whenever county offices are consolidated, the officer of the consolidated office may appoint as many deputies as are approved by the board or boards of county commissioners.

(2) The board or boards shall determine the number of deputies, stenographers, and clerks the officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part); amd. Sec. 7, Ch. 443, L. 1979.

Part 24
Deputy Officers in General

Part Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-2401. Deputy officers. (1) Each county and township officer, except a justice of the peace and the county assessor, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. All compensation or salary of any deputy or assistant must be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk and recorder.

History: (1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2)En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935; Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410; amd. Sec. 7, Ch. 27, Sp. L. November 1993.

7-4-2402. Authorization to exceed limitation on number of deputy officers. The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

History: Ap. p. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R.C.M. 1921; re-en. Sec. 4878, R.C.M. 1935; Sec. 16-3704, R.C.M. 1947; Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; R.C.M. 1947, 16-3704(part), 25-604(part).

7-4-2403. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes the officer's deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R.C.M. 1921; Cal. Pol. C. Sec. 4114; re-en. Sec. 4733, R.C.M. 1935; R.C.M. 1947, 16-2411; amd. Sec. 412, Ch. 61, L. 2007.

7-4-2404. Limitation on county officer acting as deputy officer. No county officer under salary must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

History: En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907; re-en. Sec. 412, R.C.M. 1921; Cal. Pol. C. Sec. 843; amd. Sec. 1, Ch. 21, L. 1925; re-en. Sec. 412, R.C.M. 1935; R.C.M. 1947, 59-303.

7-4-2405. Appointment of deputies in certain counties of seventh class. (1) In any county of the seventh class having less than 2,000 population, there shall not be appointed any deputy county officer or deputy designated by any county officer of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county.

(2) The board shall not approve any compensation in payment for services of any person appointed by or acting under any elected or appointed officer of said county whose appointment, as herein provided, shall not have been authorized and approved by the board of such county.

History: (1)En. Sec. 1, Ch. 168, L. 1941; Sec. 16-3707, R.C.M. 1947; (2)En. Sec. 2, Ch. 168, L. 1941; Sec. 16-3708, R.C.M. 1947; R.C.M. 1947, 16-3707, 16-3708.

Part 25
Compensation and Official Fees

7-4-2501. Compensation of county officers. (1) The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law.

(2) All other county officers receive salaries.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907; re-en. Sec. 4865, R.C.M. 1921; re-en. Sec. 4865, R.C.M. 1935; R.C.M. 1947, 25-202; amd. Sec. 2, Ch. 371, L. 1979; amd. Sec. 8, Ch. 443, L. 1979; amd. Sec. 4, Ch. 518, L. 1981; amd. Sec. 24, Ch. 575, L. 1981.

7-4-2502. Payment of salaries of county officials and assistants — state share for county attorney — statutory appropriation. (1) The salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) The funding for the salary and health insurance benefits for the county attorney is a shared responsibility of the state and the county. The state's share is payable as provided in subsection (3).

(3) (a) For each fiscal year, the department of justice shall pay to each county and consolidated government the amount calculated under subsection (3)(b). Payments must be made quarterly.

(b) (i) For each county and consolidated government with a full-time county attorney, the amount paid each fiscal year must be equal to 50% of 85% of a district court judge's salary most recently set under 3-5-211 plus an amount equal to 50% of the employer contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701.

(ii) For each county and consolidated government with a part-time county attorney, the total amount paid each fiscal year must be equal to the amount calculated under subsection (3)(b)(i) prorated according to the position's regular work hours.

(c) For the purpose of this subsection (3), the following definitions apply:

(i) "Full-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a full-time position pursuant to 7-4-2706.

(ii) "Part-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a part-time position pursuant to 7-4-2706.

(iii) "Salary" means wage plus the employer contributions required for retirement, workers' compensation insurance, and the Federal Insurance Contributions Act as determined for a district court judge.

(4) The amount to be paid to each county pursuant to subsection (3) is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of justice.

(5) The board may, under limitations and restrictions prescribed by law, fix the compensation of all county officers not otherwise fixed by law and provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504, set their salaries at the prior fiscal year level.

History: (1)(a), (2)En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R.C.M. 1921; amd. Sec. 4, Ch. 141, L. 1925; re-en. Sec. 4868, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1945; Sec. 25-601, R.C.M. 1947; (1)(b)En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R.C.M. 1921; re-en. Sec. 4872, R.C.M. 1935; Sec. 25-602, R.C.M. 1947; (3)En. Subd. 18, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.17, R.C.M. 1935; Sec. 16-1020, R.C.M. 1947; R.C.M. 1947, 16-1020, 25-601, 25-602(part); amd. Sec. 1, Ch. 109, L. 1979; amd. Sec. 9, Ch. 443, L. 1979; amd. Sec. 2, Ch. 719, L. 1985; amd. Sec. 3, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 17, Sp. L.

June 1986; amd. Sec. 1, Ch. 667, L. 1991; amd. Sec. 1, Ch. 332, L. 1993; amd. Sec. 5, Ch. 325, L. 1995; amd. Sec. 1, Ch. 75, L. 1999; amd. Sec. 11, Ch. 114, L. 2003; amd. Sec. 2, Ch. 230, L. 2007.

Cross-References

Salary of County Attorney and Deputy County Attorney, 7-4-2503.

Fees affidavit required of county officers, 7-4-2514.

Enumeration of county charges — one-half salary of County Attorney, 7-6-2426.

County levy for certain court expenses, 7-6-2511.

District Court budgets, 7-6-4022.

Inclusion of state's share of County Attorney salaries in Department of Justice budget, 17-7-112.

Imposition of charge upon conviction or forfeiture — use of money for salaries of city or town attorney and deputies and Deputy County Attorney, 46-18-236.

7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, county coroner, and county auditor in all counties in which the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) Except as provided in subsection (2), the annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to $2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(f) The county coroner may be a part-time position, and the salary may be set accordingly.

(3) (a) Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).

(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.

(c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of:

(i) the county commissioners;

(ii) three of the county officials described in subsection (1) appointed by the board of county commissioners;

(iii) the county attorney;

(iv) two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term; and

(v) (A) subject to subsection (4)(a)(v)(B), one resident taxpayer appointed by each of the three county officials described in subsection (4)(a)(ii).

(B) The appointments in subjection (4)(a)(v)(A) are not mandatory.

(b) The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(c) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(d) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(e) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government.

History: Ap. p. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974; amd. Sec. 3, Ch. 102, L. 1975; amd. Sec. 1, Ch. 195, L. 1975; amd. Sec. 1, Ch. 493, L. 1977; Sec. 25-605, R.C.M. 1947; Ap. p. Sec. 4, Ch. 150, L. 1945; amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1, Ch. 177, L. 1949; Sec. 25-608, R.C.M. 1947; R.C.M. 1947, 25-605, 25-608; amd. Sec. 1, Ch. 459, L. 1979; amd. Sec. 4, Ch. 669, L. 1979; amd. Sec. 1, Ch. 518, L. 1981; amd. Sec. 1, Ch. 562, L. 1985; amd. Sec. 3, Ch. 719, L. 1985; amd. Sec. 4, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 257, L. 1989; amd. Sec. 1, Ch. 505, L. 1989; amd. Sec. 2, Ch. 527, L. 1991; amd. Sec. 2, Ch. 667, L. 1991; amd. Sec. 10, Ch. 10, L. 1993; amd. Sec. 1, Ch. 230, L. 1995; amd. Sec. 1, Ch. 233, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 411, L. 1999; amd. Sec. 5, Ch. 7, L. 2001; amd. Sec. 3, Ch. 507, L. 2001; amd. Sec. 1, Ch. 487, L. 2003; amd. Sec. 3, Ch. 36, L. 2005; amd. Sec. 1, Ch. 182, L. 2005; amd. Sec. 1, Ch. 200, L. 2007; amd. Sec. 3, Ch. 230, L. 2007; amd. Sec. 1, Ch. 133, L. 2009; amd. Sec. 9, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 133 inserted (4)(a)(v) adding nonmandatory resident taxpayers appointed by each of three county officials to the county compensation board; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 291 in (1)(a) near middle after "justice of the peace" inserted "county coroner"; inserted (2)(f) providing that county coroner may be part-time position; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Classification of counties, 7-1-2111.
Compensation for officer of consolidated county office, 7-4-2312.
Authorization of County Auditor, 7-6-2401.
County levy for certain court expenses, 7-6-2511.
District Court budgets, 7-6-4022.
Inclusion of state's share of County Attorney salaries in Department of Justice budget, 17-7-112.
Montana University System, Title 20, ch. 25.
Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. The county governing body shall by resolution on or before August 1 of each year adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, clerk of district court, county auditor (if there is one), justice of the peace, county coroner, and county surveyor (if the surveyor receives a salary) by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4).

History: **En. Sec. 1, Ch. 306, L. 1973; R.C.M. 1947, 25-609.1; amd. Sec. 10, Ch. 443, L. 1979; amd. Sec. 2, Ch. 459, L. 1979; amd. Sec. 3, Ch. 518, L. 1981; amd. Sec. 25, Ch. 575, L. 1981; amd. Sec. 5, Ch. 12, Sp. L. June 1986; amd. Sec. 2, Ch. 257, L. 1989; amd. Sec. 2, Ch. 505, L. 1989; amd. Sec. 3, Ch. 527, L. 1991; amd. Sec. 11, Ch. 10, L. 1993; amd. Sec. 2, Ch. 230, L. 1995; amd. Sec. 2, Ch. 233, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 4, Ch. 507, L. 2001; amd. Sec. 10, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 near middle after "justice of the peace" inserted "county coroner"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Judicial salaries not to be diminished during term of office, Art. VII, sec. 7, Mont. Const.

Salaries for Justice of the Peace, 3-10-207.

7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) county attorney;

(e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving. The salary of a deputy county attorney, including longevity payments provided in 7-4-2503(3)(c), may not exceed the salary of the county attorney under whom the deputy is serving.

(b) If a deputy or assistant is employed for a period of less than 1 year, the compensation of the deputy or assistant must be for the time employed and the rate of compensation may not be in excess of the rates provided by law for similar deputies and assistants.

History: **Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; Ap. p. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; R.C.M. 1947, 25-604(part), 84-402(part); amd. Sec. 1, Ch. 603, L. 1981; amd. Sec. 4, Ch. 719, L. 1985; amd. Sec. 8, Ch. 27, Sp. L. November 1993; amd. Sec. 11, Ch. 2, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 2 in (2)(a) in second sentence after "provided in" substituted "7-4-2503(3)(c)" for "7-4-2503(3)(d)"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Compensation of Undersheriff and Deputy Sheriff, 7-4-2508.

Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-2506. Repealed. Sec. 1, Ch. 114, L. 1999.

History: **En. Sec. 4610, Pol. C. 1895; re-en. Sec. 3143, Rev. C. 1907; re-en. Sec. 4891, R.C.M. 1921; re-en. Sec. 4891, R.C.M. 1935; R.C.M. 1947, 25-207.**

7-4-2507. Deputy sheriff and undersheriff provisions — construction. If there is a conflict between 7-4-2508 through 7-4-2510 and any other law, 7-4-2508 through 7-4-2510 govern with respect to undersheriffs and deputy sheriffs.

History: **En. Sec. 7, Ch. 603, L. 1981.**

7-4-2508. Compensation of undersheriff and deputy sheriff. (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

Below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (2)(a) according to a rank structure in the office.

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.

History: En. Sec. 2, Ch. 603, L. 1981; amd. Sec. 4, Ch. 36, L. 2005.

7-4-2509. Sheriff's office — work period in lieu of workweek — overtime compensation. (1) (a) A sheriff's office may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of the regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.

History: En. Secs. 3, 4, Ch. 603, L. 1981; amd. Sec. 5, Ch. 36, L. 2005.

7-4-2510. Sheriff's office — longevity payments. Beginning on the date of the deputy sheriff's or undersheriff's first anniversary of employment with the office and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the office, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment must be made in equal monthly installments.

History: En. Sec. 5, Ch. 603, L. 1981; amd. Sec. 6, Ch. 12, Sp. L. June 1986; amd. Sec. 6, Ch. 36, L. 2005.

7-4-2511. Collection and disposal of fees. (1) Each salaried county officer shall charge and collect for the use of the county and pay into the county treasury by the 10th day in each month all fees allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. This subsection does not apply to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in the sheriff's custody.

(2) A salaried county officer may not receive for the officer's own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

History: (1)En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R.C.M. 1921; re-en. Sec. 4887, R.C.M. 1935; Sec. 25-203, R.C.M. 1947; (2)En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R.C.M. 1921; amd. Sec. 3, Ch. 141, L. 1925; re-en. Sec. 4864, R.C.M. 1935; Sec. 25-201, R.C.M. 1947; R.C.M. 1947, 25-201, 25-203; amd. Sec. 11, Ch. 443, L. 1979; amd. Sec. 1, Ch. 88, L. 1987; amd. Sec. 413, Ch. 61, L. 2007.

7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer by the 10th day of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana
County of ....

I, ..., of the county of ...., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ...., 20..., and that this fee book shows the full amount received or chargeable in that month and since my last monthly payment; that neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, that is not fully set out in this fee book; and that the foregoing statement is a correct copy of the statement.

.... (Signature)

Subscribed and sworn to before me this ..... day of ...., 20...

Seal .... (Person authorized to take oaths)
.... (Title or notarial information)

History: En. Sec. 4607, Pol. C. 1895; re-en. Sec. 3140, Rev. C. 1907; re-en. Sec. 4888, R.C.M. 1921; re-en. Sec. 4888, R.C.M. 1935; R.C.M. 1947, 25-204; amd. Sec. 12, Ch. 443, L. 1979; amd. Sec. 2, Ch. 88, L. 1987; amd. Sec. 10, Ch. 51, L. 1999.

7-4-2513. Filing of statements and affidavits. The treasurer shall file and preserve in the treasurer's office the statements and affidavits provided for in 7-4-2512 and shall issue to the officer one original and one duplicate receipt for the statements and affidavits. The officer receiving the receipts must preserve one in the officer's office and file the duplicate with the county clerk, who shall charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907; re-en. Sec. 4889, R.C.M. 1921; re-en. Sec. 4889, R.C.M. 1935; R.C.M. 1947, 25-205; amd. Sec. 414, Ch. 61, L. 2007.

7-4-2514. Filing required to receive salary. The board of county commissioners may not order the payment of the salary of any officer until the officer has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that the officer has made the statement and settlement for that month as required in this part.

History: En. Sec. 4609, Pol. C. 1895; re-en. Sec. 3142, Rev. C. 1907; re-en. Sec. 4890, R.C.M. 1921; re-en. Sec. 4890, R.C.M. 1935; R.C.M 1947, 25-206; amd. Sec. 46, Ch. 278, L. 2001.

7-4-2515. Fees to be paid in advance. (1) The officers mentioned in this chapter may not perform any official services unless the fees prescribed for the services are paid in advance. On payment, the officers shall perform the services required. For every failure or refusal to perform the official duty when the fees are tendered, the officer is liable on the officer's official bond.

(2) The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with the office until the fee for the recording or the service as prescribed by law is, if demanded, paid or tendered.

(3) When any publication is required by law to be made by an officer of any suit, process, notice, order, or other paper, the costs of the publication must be first tendered by the party, if demanded, for whom the order of publication was granted before the officer is compelled to make the publication.

History: (1)En. Sec. 4611, Pol. C. 1895; re-en. Sec. 3144, Rev. C. 1907; re-en. Sec. 4892, R.C.M. 1921; re-en. Sec. 4892, R.C.M. 1935; Sec. 25-208, R.C.M. 1947; (2)En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907; re-en. Sec. 4809, R.C.M. 1921; Cal. Pol. C. Sec. 4245; re-en. Sec. 4809, R.C.M. 1935; Sec. 16-2915, R.C.M. 1947; (3)En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907; re-en. Sec. 4898, R.C.M. 1921; re-en. Sec. 4898, R.C.M. 1935; Sec. 25-214, R.C.M. 1947; R.C.M. 1947, 16-2915, 25-208, 25-214; amd. Sec. 415, Ch. 61, L. 2007.

7-4-2516. Fees not required in certain cases. No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907; re-en. Sec. 4893, R.C.M. 1921; re-en. Sec. 4893, R.C.M. 1935; R.C.M. 1947, 25-209.

7-4-2517. Itemized receipt for fees. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the fee to make and deliver to the person a written account of the fees, specifying for what they accrued, respectively, and shall issue a receipt for the fee. If the officer refuses or neglects to issue an account and a receipt when required, the officer is liable to the party paying the fee in treble the amount paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907; re-en. Sec. 4895, R.C.M. 1921; re-en. Sec. 4895, R.C.M. 1935; R.C.M. 1947, 25-211; amd. Sec. 416, Ch. 61, L. 2007.

7-4-2518. Statement of fees to be posted. (1) It is the duty of each officer entitled to collect fees to keep posted in the office a plain and legible statement of the fees allowed by law.

(2) A failure to do so subjects the officer to a fine of $100 and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907; re-en. Sec. 4896, R.C.M. 1921; re-en. Sec. 4896, R.C.M. 1935; R.C.M. 1947, 25-212; amd. Sec. 417, Ch. 61, L. 2007.

7-4-2519. Prohibition upon receiving other fees. The officers named above may receive no other fees for any services performed by them in any action or proceeding or for the performance of any service for which fees are allowed, and the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, in addition to the cost of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907; re-en. Sec. 4897, R.C.M. 1921; re-en. Sec. 4897, R.C.M. 1935; R.C.M. 1947, 25-213; amd. Sec. 13, Ch. 443, L. 1979.

7-4-2520. Misconduct concerning official fees to result in vacancy of office. Upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees or upon proof that the officer collected fees and failed to account for the fees, the board of county commissioners must declare the office vacant and appoint a successor.

History: En. Sec. 4629, Pol. C. 1895; re-en. Sec. 3162, Rev. C. 1907; re-en. Sec. 4911, R.C.M. 1921; re-en. Sec. 4911, R.C.M. 1935; R.C.M. 1947, 25-230; amd. Sec. 418, Ch. 61, L. 2007.

Cross-References

Official misconduct, 45-7-401.

7-4-2521. Designation of person to receive decedent's warrants or paychecks — reissuance. Any person employed by a county may file with the appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent. The employee may change the designation from time to time. A designated person shall claim the warrants or paychecks from the county clerk, and on sufficient proof of identity, the county clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.

History: En. Sec. 1, Ch. 113, L. 1983; amd. Sec. 419, Ch. 61, L. 2007.

Cross-References

State employees designation, 2-18-412.
City employees designation, 7-4-4211.

7-4-2522 through 7-4-2524 reserved.

7-4-2525. Fees of sheriff to be fixed by resolution. (1) The county governing body may annually, by resolution pursuant to 7-6-4013, fix the fees of the sheriff for services provided in 7-32-2141 and for other services.

(2) Fees for services provided under 7-32-2141 must be based upon the prevailing rate charged by private process servers in the county for similar services.

(3) Fees collected under this section must be paid and credited as provided in 7-32-2141.

History: En. Sec. 1, Ch. 372, L. 1989; amd. Sec. 11, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) after "resolution" inserted "pursuant to 7-6-4013" and at end inserted "and for other services"; and in (2) substituted "Fees for services provided under 7-32-2141" for "Fees set under subsection (1)". Amendment effective October 1, 2009.

Part 26
Office of County Clerk

7-4-2601. Limitation on number of deputy county clerks. The whole number of deputies allowed the county clerk must not exceed:

(1) six in counties of the first and second classes;
(2) three in counties of the third class;
(3) two in counties of the fourth and fifth classes;
(4) one in counties of the sixth and seventh classes.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part).

Cross-References

Classification of counties, 7-1-2111.
Authorization to exceed limitation on number of deputies, 7-4-2402.
Official mention of principal officer includes deputies, 7-4-2403.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-2602. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of the deputy clerks as chief deputy clerk.

History: En. Sec. 1, Ch. 53, L. 1909; re-en. Sec. 4876, R.C.M. 1921; re-en. Sec. 4876, R.C.M. 1935; R.C.M. 1947, 16-3702; amd. Sec. 420, Ch. 61, L. 2007.

7-4-2603 through 7-4-2610 reserved.

7-4-2611. Role and duties of county clerk and election administrator. (1) The county clerk of a county is also clerk of the county commissioners and ex officio recorder. A duty imposed by law upon the officer, whether as county clerk, clerk of the county commissioners, or recorder, must be performed by the county clerk, and any official act performed or certified by the county clerk is as valid and effectual as if performed and certified by the clerk of the county commissioners or the recorder.

(2) The county clerk shall:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records that may be filed or deposited in the county clerk's office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on a question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the orders and warrants to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board on the petitions and applications;

(i) record all orders levying taxes;

(j) designate upon each account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record or any account on file in the county clerk's office;

(k) when a new township is organized or the boundaries of a township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries of the township organized or altered;

(l) keep other records and books and perform other duties that are prescribed by law or by rule or order of the board.

(3) An election administrator shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of political practices.

(4) An election administrator shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, available for public inspection and copying during the office hours determined by the governing body by resolution after a public hearing and make copying facilities available free of charge or at a charge not to exceed actual cost.

History: (1)En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907; re-en. Sec. 4813a, R.C.M. 1921; re-en. Sec. 4813.1, R.C.M. 1935; Sec. 16-2920, R.C.M. 1947; (2)Ap. p. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; Ap. p. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; Sec. 16-2901, R.C.M. 1947; Ap. p. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; Sec. 16-908, R.C.M. 1947; Ap. p. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907; re-en. Sec. 4813, R.C.M. 1921; Cal. Pol. C. Sec. 4205; re-en. Sec. 4813, R.C.M. 1935; Sec. 16-2919, R.C.M. 1947; (3), (4)En. 23-4790 by Sec. 15, Ch. 480, L. 1975; Sec. 23-4790, R.C.M. 1947; R.C.M. 1947, 16-908, 16-2901(part), 16-2917(1), 16-2919, 16-2920, 23-4790; amd. Sec. 303, Ch. 571, L. 1979; amd. Sec. 26, Ch. 575, L. 1981; amd. Sec. 1, Ch. 591, L. 1991; amd. Sec. 4, Ch. 216, L. 1995.

Cross-References

Restriction on practice of law, 7-4-2210.

Duties of County Clerk related to finance, 7-6-2202 through 7-6-2204.

7-4-2612. Books for recording documents. The county clerk, as ex officio recorder, shall procure books or other recording materials for records that the business of the office requires, but orders for the books or materials must first be obtained from the board of county commissioners.

History: En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; R.C.M. 1947, 16-2901(part); amd. Sec. 10, Ch. 420, L. 1993.

7-4-2613. Documents subject to recording. (1) The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, photographic, micrographic, or electronic process or by the use of prepared blank forms:

(a) (i) subject to subsection (1)(a)(ii), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, reconveyances by trustees of deeds of trust, assignments of mortgages and deeds of trust, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(ii) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(b) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void.

(c) an acknowledged statement indicating that the holder of a nonprobate interest in real property is deceased. A nonprobate interest in real property is a joint tenancy interest or a life estate interest. The acknowledged statement must contain:

(i) a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated; and

(ii) a legal description of the property.

(d) certificates of births and deaths;

(e) wills devising real estate admitted to probate;

(f) official bonds;

(g) transcripts of judgments that by law are made liens upon real estate;

(h) instruments describing or relating to the individual property of married persons;

(i) all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

(j) notice of preemption claims;

(k) notice and declaration of water rights;

(l) assignments for the benefit of creditors;

(m) affidavits of annual work done on mining claims;

(n) notices of mining locations and declaratory statements;

(o) estrays and lost property;

(p) a book containing appraisement of state lands; and

(q) other writings that are required or permitted by law to be recorded.

(2) Any instrument that qualifies for recording under this section may incorporate by reference any provision, statement, description, or other language or material that is contained in another properly recorded instrument and that is recorded in the same county as the instrument that is incorporating the language or material by reference is to be recorded.

History: Ap. p. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; Ap. p. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907; re-en. Sec. 4801, R.C.M. 1921; Cal. Pol. C. Sec. 4238; re-en. Sec. 4801, R.C.M. 1935; Sec. 16-2907, R.C.M. 1947; R.C.M. 1947, 16-2902(part), 16-2907; amd. Sec. 14, Ch. 443, L. 1979; amd. Sec. 1, Ch. 701, L. 1979; amd. Sec. 1, Ch. 377, L. 1981; amd. Sec. 1, Ch. 366, L. 1993; amd. Sec. 11, Ch. 420, L. 1993; amd. Sec. 3, Ch. 391, L. 1995; amd. Sec. 1, Ch. 9, Sp. L. May 2000; amd. Sec. 1, Ch. 37, L. 2001; amd. Sec. 1, Ch. 412, L. 2001.

Cross-References

Fees of County Clerk, 7-4-2631.

Realty Transfer Act, Title 15, ch. 7, part 3.

Notice to purchaser of property under contract for deed, 70-20-115.

Recording transfers and other transactions relating to real property, Title 70, ch. 21.

Nonprobate interests in real estate, 72-16-502.

7-4-2614. Records of certificates of discharge from military service. (1) It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person who served with the United States forces upon that person's request. It is not the clerk's duty to file the certificate.

(2) A record of a military discharge certificate is confidential and exempt from the provisions of Title 2, chapter 6. A military discharge certificate may be disclosed only to:

(a) the service member for whom the certificate was recorded;

(b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;

(c) a veterans' service officer or a veterans' service organization, as defined in 10-2-111;

(d) the veterans' affairs division of the Montana department of military affairs; or

(e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased.

(3) If an original discharge certificate was inadvertently filed and the county clerk still retains the certificate in its original form, upon the written request of the service member or of the service member's next of kin if the service member is deceased, the clerk shall return the filed certificate to the service member or to the service member's next of kin if the service member is deceased.

(4) For purposes of this section:

(a) "file" means to store in original form; and

(b) "record" means to make and keep a copy from which a certified original copy can be reproduced.

History: En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R.C.M. 1921; re-en. Sec. 5654, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1943; Sec. 77-801, R.C.M. 1947; amd. and redes. 16-2927 by Sec. 3, Ch. 94, L. 1974; R.C.M. 1947, 16-2927; amd. Sec. 2, Ch. 116, L. 2003; amd. Sec. 1, Ch. 165, L. 2005.

7-4-2615. Records of water users' associations. In each county where water users' associations organized in conformity with the federal reclamation laws of the United States exist, the county commissioners are required to furnish the county recorder with books for the proper recording of stock subscriptions, contracts, articles of incorporation, and stock certificates of such associations, containing printed blank forms of the stock subscriptions, contracts, articles of incorporation, and stock certificates. The forms are to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

History: En. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; R.C.M. 1947, 16-1101(part); amd. Sec. 15, Ch. 443, L. 1979.

Cross-References

Water users' associations, Title 85, ch. 6, part 1.

7-4-2616. Map book. The county clerk shall keep a well-bound book containing maps of towns, villages, or additions to the towns or villages within the county, together with the description, acknowledgment, or other writing on the maps.

History: En. Sec. 4416, Pol. C. 1895; re-en. Sec. 3037, Rev. C. 1907; re-en. Sec. 4803, R.C.M. 1921; re-en. Sec. 4803, R.C.M. 1935; R.C.M. 1947, 16-2909; amd. Sec. 421, Ch. 61, L. 2007.

7-4-2617. Procedure to record documents. (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, the clerk must endorse upon the document the time it was received, noting the year, month, day, hour, and minute of its receipt, and the receipt of the instrument must be immediately entered in the county clerk and recorder's receipt book.

(2) If the printed, written, or typed words or numbers are considered by the clerk and recorder to be illegible and not legibly reproducible, the clerk and recorder must affix to the recorded document a statement that the document is illegible and not legibly reproducible.

(3) The county clerk shall record the instrument without delay, together with the acknowledgment, proofs, and certificates written upon or attached to the instrument and with the plats, surveys, schedule, and other attached papers, in the order and as of the time when the

instrument was received for recording, and shall note at the foot of the record the exact time of its receipt.

(4) The county clerk shall also endorse upon each instrument, paper, or notice the time when and the book and pages or document number in which it is recorded and shall deliver it, upon request, to the party leaving the document for recording or to the party's order.

History: (1), (2)En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; Sec. 16-2911, R.C.M. 1947; (3)En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907; re-en. Sec. 4806, R.C.M. 1921; Cal. Pol. C. Sec. 4242; re-en. Sec. 4806, R.C.M. 1935; Sec. 16-2912, R.C.M. 1947; R.C.M. 1947, 16-2911(part), 16-2912; amd. Sec. 1, Ch. 551, L. 1983; amd. Sec. 1, Ch. 82, L. 1989; amd. Sec. 422, Ch. 61, L. 2007.

7-4-2618. Addresses required to record certain documents. The county clerk shall not receive for recording any deed, mortgage, or assignment of mortgage unless the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, is contained therein. This requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; R.C.M. 1947, 16-2911(part).

7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants, and transfers and contracts to sell or convey real estate and notices of buyer's interest in real property labeled "Grantors", with each page divided into four columns headed, respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(2) an index of deeds and notices of buyer's interest in real property labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with each page divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and "Where powers are recorded";

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively: "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

(9) an index of marriage certificates labeled "Marriage certificates—Men", with each page divided into six columns headed, respectively: "Men married", "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(10) an index of marriage certificates labeled "Marriage certificates—Women", with each page divided into six columns headed, respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(11) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignors", with each page divided into five columns headed, respectively:

"Assignors", "Assignees", "Instruments assigned", "Date of assignment", and "When and where recorded";

(12) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignees", with each page divided into five columns headed, respectively: "Assignees", "Assignors", "Instruments", "Date of assignment", and "When and where recorded";

(13) an index of wills labeled "Wills", with each page divided into four columns headed, respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

(14) an index of official bonds labeled "Official bonds", with each page divided into five columns headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and where recorded";

(15) an index of notices of construction liens labeled "Construction liens", with each page divided into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when filed";

(16) an index to transcripts of judgments labeled "Transcripts of judgments", with each page divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

(17) an index of attachments labeled "Attachments", with each page divided into columns headed, respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When filed", and "When attachments discharged";

(18) an index of notices of the pendency of actions labeled "Notices of actions", with each page divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled "Certificates of sale", with each page divided into four columns headed, respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

(20) an index of the individual property of married persons labeled "Individual property of married persons", with each page divided into five columns headed, respectively: "Names of married persons", "Names of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", with each page divided into four columns headed, respectively: "Name of the affiant", "Name of the claim", "Where situated", and "Year when the work was done";

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: (1) thru (28), (30)En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R.C.M. 1921; Cal. Pol. C. Sec. 4236; re-en. Sec. 4799, R.C.M. 1935; amd. Sec. 11-111, Ch. 264, L. 1963; amd. Sec. 2, Ch. 199, L. 1975; amd. Sec. 20, Ch. 293, L. 1975; (29)En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907; re-en. Sec. 4800, R.C.M. 1921; re-en. Sec. 4800, R.C.M. 1935; Sec. 16-2906, R.C.M. 1947; R.C.M. 1947, 16-2905, 16-2906; amd. Sec. 16, Ch. 443, L. 1979; amd. Sec. 2, Ch. 701, L. 1979; amd. Sec. 5, Ch. 220, L. 1985.

7-4-2620. Details relating to indexes. (1) The county clerk may keep in the same volume any two or more of the indexes mentioned in 7-4-2619, but the several indexes must be kept distinct from each other, with the volumes distinctly marked on the outside in such way as to show all the indexes kept therein.

(2) The names of the parties in the first column of the several indexes must be arranged in alphabetical order. When a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index. When an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895; re-en. Sec. 3038, Rev. C. 1907; re-en. Sec. 4804, R.C.M. 1921; Cal. Pol. C. Sec. 4240; re-en. Sec. 4804, R.C.M. 1935; R.C.M. 1947, 16-2910.

7-4-2621. Search of records. Upon the application of any person and upon the payment of the applicable fees, the county clerk may:

(1) make searches for conveyances, mortgages, and all other instruments recorded or filed in the county clerk's office; and

(2) furnish a certificate stating the names of the parties to the instruments; the dates of the instruments; the year, month, day, hour, and minute they were recorded or filed; and the book and pages where they are recorded.

History: En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907; re-en. Sec. 4807, R.C.M. 1921; Cal. Pol. C. Sec. 4243; re-en. Sec. 4807, R.C.M. 1935; R.C.M. 1947, 16-2913; amd. Sec. 1, Ch. 156, L. 2001.

7-4-2622. Availability of records. All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who may desire to inspect them and may be inspected without charge. The county clerk shall arrange the books of record and indexes in the office in suitable places that facilitate their inspection.

History: En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907; re-en. Sec. 4810, R.C.M. 1921; Cal. Pol. C. Sec. 4246; re-en. Sec. 4810, R.C.M. 1935; R.C.M. 1947, 16-2916; amd. Sec. 423, Ch. 61, L. 2007.

Cross-References

Public documents open for inspection, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-4-2623. Liability of clerk relating to duties as recorder. A county clerk is liable to the party aggrieved for three times the amount of the damages that may result and is punishable as provided in this code if the county clerk to whom an instrument is delivered for record:

(1) neglects or refuses to record the instrument within reasonable time after receipt;

(2) falsely records an instrument or records an instrument in any other manner than as directed in this part;

(3) neglects or refuses to keep in the clerk's office indexes that are required by this part or to make the proper entries in the indexes; or

(4) alters, changes, or obliterates any records deposited in the clerk's office or inserts any new matter in the records.

History: En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907; re-en. Sec. 4808, R.C.M. 1921; Cal. Pol. C. Sec. 4244; re-en. Sec. 4808, R.C.M. 1935; R.C.M. 1947, 16-2914; amd. Sec. 2, Ch. 156, L. 2001.

Cross-References

Liability exposure of local government, Title 2, ch. 9.
Actions on official bonds, 2-9-501.
Official misconduct, 45-7-401.

7-4-2624 through 7-4-2630 reserved.

7-4-2631. Fees of county clerk. (1) Except as provided in 7-4-2632 and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

(d) for filing of subdivision and townsite plats, $5 plus:
(i) for each lot up to and including 100, 50 cents;
(ii) for each additional lot in excess of 100, 25 cents;
(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;
(f) for a copy of a record or paper:
(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and
(ii) for each certification with seal affixed, $2;
(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;
(h) for administering an oath with certificate and seal, no charge;
(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;
(j) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;
(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;
(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;
(m) for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;
(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.

History: Ap.p. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; Sec. 25-231, R.C.M. 1947; Ap.p. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; Sec. 16-1101, R.C.M. 1947; Ap.p. Sec. 8, Ch. 198, L. 1961; Sec. 70-415, R.C.M. 1947; R.C.M. 1947, 16-1101(part), 25-231(part), 70-415(part); amd. Sec. 1, Ch. 487, L. 1979; amd. Sec. 1, Ch. 414, L. 1981; amd. Sec. 1, Ch. 467, L. 1983; amd. Sec. 2, Ch. 14, L. 1985; amd. Sec. 1, Ch. 27, L. 1985; amd. Sec. 6, Ch. 220, L. 1985; amd. Sec. 10, Ch. 370, L. 1987; amd. Sec. 1, Ch. 37, L. 1989; amd. Sec. 1, Ch. 292, L. 1989; amd. Sec. 1, Ch. 451, L. 1991; amd. Sec. 127, Ch. 305, L. 1999; amd. Sec. 3, Ch. 571, L. 2003.

Cross-References

Administration of fee accountability, 7-4-2511 through 7-4-2520.

7-4-2632. Fee when recording done by mechanical means. Whenever recording is done by a photographic or similar process, the county clerk and recorder shall charge $7 for each page or fraction of a page of the instrument for recording.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(8); amd. Sec. 2, Ch. 414, L. 1981; amd. Sec. 2, Ch. 467, L. 1983; amd. Sec. 2, Ch. 27, L. 1985; amd. Sec. 1, Ch. 355, L. 1991; amd. Sec. 12, Ch. 135, L. 2005.

7-4-2633. Repealed. Sec. 3, Ch. 414, L. 1981.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(part).

7-4-2634. Fees to be noted on recorded documents. On each instrument delivered for recording, the county clerk shall endorse on it all charges made for each service, and the endorsement must be recorded as a part of the instrument in the county clerk's office to document the charges entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264,

L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(17); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 5, Ch. 179, L. 1995.

Cross-References

Fee receipt required, 7-4-2517.

7-4-2635. Records preservation fund authorized. (1) The board of county commissioners shall establish a records preservation fund for the purpose of preserving the records maintained by the county clerk and recorder. The county clerk and recorder is responsible for expenditures from the fund and shall use the money for records preservation.

(2) The county clerk and recorder shall deposit $1 of the fee received under 7-4-2632 into the records preservation fund.

(3) The governing body of the county may transfer to the general fund any money in the records preservation fund that is not needed for records preservation.

History: En. Sec. 2, Ch. 355, L. 1991.

7-4-2636. Standards for recorded documents — exemptions. (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in black ink in at least 10-point typeface on white paper of not less than 20-pound weight, each page of which must be separated and have dimensions of either 8 ½ x 11 inches or 8 ½ x 14 inches;

(b) provide the names of the parties to the conveyance on the first or second page of any document with more than one page;

(c) provide a description of the property;

(d) have all signatures, initials, dates, handwriting, or notary stamps in blue or black ink;

(e) except as provided in subsection (1)(f) and except for page numbers or other designations, have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages;

(ii) at least 1 inch on the bottom of each page;

(iii) at least 1/2 inch on the sides of each page; and

(f) include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page within the 3-inch top margin and between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information.

(2) Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), (1)(e), and (1)(f).

(3) (a) Except as provided in subsection (3)(b), only documents submitted for recording and filing that conform to the provisions of subsection (1) or (2) are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to April 28, 2007, must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of subsection (1) or (2).

(4) (a) An acknowledgment by a notary is exempt from the color, typeface, and font requirements of this section.

(b) An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section.

History: En. Sec. 1, Ch. 571, L. 2003; amd. Sec. 1, Ch. 344, L. 2007.

7-4-2637. Fees for recording standard documents. (1) Except as provided in 7-4-2631 and subsection (2) of this section, the fee for recording a standard document that meets the requirements of 7-4-2636 is $7 for each page or fraction of a page.

(2) The fee for recording a document that does not meet the requirements of 7-4-2636 is $11 for each page or fraction of a page for the first five pages or fractions of the pages and $7 for each subsequent page.

(3) (a) Of the fees collected under subsection (1):

(i) $1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 25 cents must be deposited in the county land information account provided for in 7-6-2230;

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit in the Montana land information account created in 90-1-409; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) Of the fees collected under subsection (2) for nonstandard documents, each $7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining $4 of each $11 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each $4 amount from an $11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.

History: En. Sec. 2, Ch. 571, L. 2003; amd. Sec. 13, Ch. 135, L. 2005.

Part 27
Office of County Attorney

Part Cross-References

Attorney General — supervisory control over County Attorneys, 2-15-501.
Compensation of County Attorney, 7-4-2503, 7-4-2504.
County Attorney or designee to serve on adult protective service team, 52-3-805.

7-4-2701. Qualifications for county attorney in certain counties. (1) A person is not eligible for the position of full-time county attorney in counties that have a population in excess of 30,000 unless the person is a citizen of the United States and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years before the date of election or appointment.

(2) A person is not eligible for the position of full-time county attorney in counties that have a population of less than 30,000 unless the person is a citizen of the United States and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 3 years before the date of election or appointment.

(3) A person is not eligible for the position of part-time county attorney in counties that have a population of less than 30,000 unless the person is a citizen of the United States and resides in the state and has been admitted to the practice of law before taking office.

History: En. 16-3107 by Sec. 2, Ch. 102; L. 1975; R.C.M. 1947, 16-3107; amd. Sec. 1, Ch. 160, L. 1997.

Cross-References

Admission to practice of law, Art. VII, sec. 2, Mont. Const.; Title 37, ch. 61.

7-4-2702. Procedure to fill vacancy in office of county attorney. Whenever a vacancy in the office of county attorney arises in a county, the board of county commissioners is authorized to appoint an attorney who meets the qualifications established in 7-4-2701 to fill the vacancy.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part); amd. Sec. 2, Ch. 160, L. 1997.

Cross-References

Certification to Department of Justice required for compensation, 7-4-2502.

7-4-2703. Limitation on number of deputies. In counties of the first and second class, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part); amd. Sec. 17, Ch. 443, L. 1979.

Cross-References

Authorization to exceed limitation on number of deputies, 7-4-2402.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for the county attorney's personally rendered services, may not present a claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) Except as provided in subsection (4), in each county in which the office of county attorney is a full-time position pursuant to 7-4-2706, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that the county attorney may engage in self-representation and may represent the county attorney's immediate family.

(3) Except as provided in subsection (4), a deputy county attorney in a county in which the office of county attorney is a full-time position pursuant to 7-4-2706 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except as to those matters in which the deputy county attorney has a direct interest.

(4) Any elected or appointed county attorney and any deputy county attorney must, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date that the person takes office, to complete any pending matters remaining from a previous private practice of law. During that time, the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law.

History: Ap. p. Sec. 4453, Pol. C. 1895; re-en. Sec. 3055, Rev. C. 1907; re-en. Sec. 4822, R.C.M. 1921; Cal. Pol. C. Sec. 4258; re-en. Sec. 4822, R.C.M. 1935; Sec. 16-3104, R.C.M. 1947; Ap. p. Secs. 1, 4, Ch. 102, L. 1975; Secs. 16-3106, 16-3108, R.C.M. 1947; R.C.M. 1947, 16-3104, 16-3106, 16-3108; amd. Sec. 1, Ch. 300, L. 1981; amd. Sec. 424, Ch. 61, L. 2007; amd. Sec. 4, Ch. 230, L. 2007.

Cross-References

Montana Supreme Court Rules of Professional Conduct for Attorneys (annotated under Art. VII, sec. 2, Mont. Const.).

7-4-2705. Employment of special counsel in certain counties. Except in counties of the first class, the board of county commissioners has the power, whenever in its judgment the ends of justice or the interest of the county require it, to employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in such county or to represent said county in any civil action in which such county is a party.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).

Cross-References

Classification of counties, 7-1-2111.

7-4-2706. County attorney to be full or part time — resolution. (1) (a) In a county with a population of less than 30,000, the county commissioners may, with the consent of the county attorney, by resolution effective July 1 of any year, establish the office of county attorney as a full-time or part-time position.

(b) A copy of a resolution adopted under subsection (1)(a) must be provided to the department of justice.

(2) In a county with a population of 30,000 or more, the office of county attorney must be a full-time position.

History: En. Sec. 1, Ch. 669, L. 1979; amd. Sec. 1, Ch. 301, L. 1981; amd. Sec. 5, Ch. 507, L. 2001; amd. Sec. 5, Ch. 230, L. 2007.

7-4-2707. Contract for services of county attorney from another county. The county commissioners of any county may, upon the consent of the county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of a county attorney's staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements.

History: En. Sec. 2, Ch. 669, L. 1979; amd. Sec. 425, Ch. 61, L. 2007.

Cross-References

Interlocal cooperation agreements, Title 7, ch. 11, part 1.

7-4-2708. Contract for services of any other attorney. In any county, the county commissioners may employ any attorney licensed in Montana to perform any legal service in connection with the civil business of the county.

History: En. Sec. 3, Ch. 669, L. 1979; amd. Sec. 1, Ch. 58, L. 1989.

7-4-2709 and 7-4-2710 reserved.

7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. The county attorney shall attend their meetings when required and shall attend and oppose all claims and accounts against the county that are unjust or illegal. The county attorney shall defend all suits brought against the county.

(2) The county attorney shall:

(a) give, when required and without fee, an opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within the county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee; and

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners.

History: Ap. p. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907; re-en Sec. 4820, R.C.M. 1921; Cal. Pol. C. Sec. 4257; re-en. Sec. 4820, R.C.M. 1935; Sec. 16-3102, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 16-3102; amd. Sec. 1, Ch. 533, L. 1979; amd. Sec. 1, Ch. 52, L. 1989; amd. Sec. 1, Ch. 7, L. 1991; amd. Sec. 1, Ch. 88, L. 1991; amd. Sec. 426, Ch. 61, L. 2007.

7-4-2712. Prosecutorial duties. The county attorney is the public prosecutor and shall:

(1) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when the county attorney has information that the offenses have been committed and for that purpose, whenever not otherwise officially engaged, must be present and assist the magistrate in cases of arrest and appear before and give advice to the grand jury whenever cases are presented to them for their consideration;

(2) draw all indictments and informations.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part); amd. Sec. 427, Ch. 61, L. 2007.

Cross-References

Supervision by Attorney General, 2-15-501.

7-4-2713. Actions to recover money. The county attorney shall prosecute all recognizances forfeited in the courts of record and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part); amd. Sec. 428, Ch. 61, L. 2007.

7-4-2714. Recovery of illegally paid money. Whenever the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and the money has been actually paid or whenever any other county officer has drawn a warrant in the officer's own favor or in favor of any other person without being authorized by the board or by law and the warrant has been paid, the county attorney shall institute an action in the name of the county against the person to recover the money and 25% damages for the use of the money. An order of the board is unnecessary to maintain this suit. Whenever the money has not been paid on the order or warrant, it is the duty of the county attorney, upon receiving notice, to commence an action in the name of the county for restraining the payment of the money, and an order of the board is unnecessary to maintain the action.

History: En. Secs. 4200, 4452, Pol. C. 1895; re-en. Secs. 2880, 3054, Rev. C. 1907; re-en. Secs. 4451, 4821, R.C.M. 1921; re-en. Secs. 4451, 4821, R.C.M. 1935; R.C.M. 1947, 16-812, 16-3103; amd. Sec. 18, Ch. 443, L. 1979; amd. Sec. 429, Ch. 61, L. 2007.

7-4-2715. Records and reports. The county attorney shall:

(1) deliver receipts for money or property received in an official capacity and file duplicates of the receipts with the county treasurer;

(2) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by oath, of all money received by the county attorney in an official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

History: **En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(4), (5), (8); amd. Sec. 430, Ch. 61, L. 2007; amd. Sec. 12, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 deleted former (1) that read: "(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings in the action"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Report to County Treasurer, 7-6-2117.

7-4-2716. Duties related to state matters. The county attorney shall:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of the county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state.

History: **En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part); amd. Sec. 431, Ch. 61, L. 2007.**

Cross-References

Supervision by Attorney General, 2-15-501.

7-4-2717. Other duties. The county attorney must perform such other duties as are prescribed by law.

History: **En. Sec. 4454, Pol. C. 1895; re-en. Sec. 3056, Rev. C. 1907; re-en. Sec. 4823, R.C.M. 1921; re-en. Sec. 4823, R.C.M. 1935; R.C.M. 1947, 16-3105.**

Part 28
Office of County Surveyor

7-4-2801. Qualifications for county surveyor and deputies. (1) Except as provided in subsection (3), a county surveyor must be a registered professional engineer or registered professional land surveyor who has been in active practice of the profession for at least 3 years and who has had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering or land surveying is considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering or land surveying.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), the officer shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor.

History: **En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R.C.M. 1921; re-en. Sec. 4835, R.C.M. 1935; R.C.M. 1947, 16-3301; amd. Sec. 1, Ch. 174, L. 1985; amd. Sec. 1, Ch. 622, L. 1985; amd. Sec. 432, Ch. 61, L. 2007.**

Cross-References

Consolidation of county offices, Title 7, ch. 4, part 23.
Licensing of land surveyors, Title 37, ch. 67, part 3.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-2802. Employment of assistants to surveyor. If a party for whom the county survey is made does not furnish the assistants, the surveyor may employ the necessary assistants and receive payment for the reasonable wages of all assistants necessarily employed.

History: **En. Sec. 4474, Pol. C. 1895; re-en. Sec. 3061, Rev. C. 1907; re-en. Sec. 4843, R.C.M. 1921; Cal. Pol. C. Sec. 4272; re-en. Sec. 4843, R.C.M. 1935; R.C.M. 1947, 16-3309; amd. Sec. 433, Ch. 61, L. 2007.**

Cross-References

Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-2803. Situations involving use of other surveyors. (1) Whenever the county surveyor is interested in any land the title to which is in dispute and a survey is necessary, the court shall direct the survey to be made by some disinterested person. The appointed person is, for the purpose, authorized to administer and certify oaths. The appointed person shall return the survey, verified by affidavit annexed to the survey, and receive for the services the same fees as the county surveyor would be entitled to for similar services.

(2) Whenever the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in this part, the board of county commissioners shall employ another competent civil engineer, who is subject to the laws governing the county surveyor.

History: (1)En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907; re-en. Sec. 4844, R.C.M. 1921; Cal. Pol. C. Sec. 4275; re-en. Sec. 4844, R.C.M. 1935; Sec. 16-3310, R.C.M. 1947; (2)En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907; re-en. Sec. 4847, R.C.M. 1921; re-en. Sec. 4847, R.C.M 1935; Sec. 16-3313, R.C.M 1947; R.C.M. 1947, 16-3310, 16-3313; amd. Sec. 19, Ch. 443, L. 1979; amd. Sec. 434, Ch. 61, L. 2007.

7-4-2804 through 7-4-2810 reserved.

7-4-2811. Function of county surveyor. (1) The county surveyor shall work under the direction of the board of county commissioners. The county surveyor may not incur any indebtedness on the part of the county without the prior order or approval of the board. The county surveyor must be provided with suitable office space, together with necessary equipment, to perform the various duties as prescribed by law.

(2) The county surveyor shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) The county surveyor shall make progress reports and estimates of all work and other facts in relation to the work as may be required by the board.

History: Ap. p. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; Sec. 16-3302, R.C.M. 1947; Ap. p. Sec. 4, Ch. 50, L. 1919; re-en. Sec. 4838, R.C.M. 1921; re-en. Sec. 4838, R.C.M. 1935; Sec. 16-3304, R.C.M. 1947; R.C.M. 1947, 16-3302(1) thru (3), 16-3304; amd. Sec. 435, Ch. 61, L. 2007.

7-4-2812. Duties related to roads and bridges. (1) The board of county commissioners may assign responsibility for the supervision and direction of all highways, bridges, and causeways within the county to a county surveyor or to a county road superintendent. The board may allocate the duties between the surveyor and the superintendent.

(2) The duties are to:

(a) keep all highways and bridges free and clear of all obstructions;

(b) grade, maintain, and repair all highways;

(c) construct, maintain, and repair all bridges and causeways;

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

(i) employ and assign deputies and staff;

(j) purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges, with the approval of the board;

(k) purchase and secure all highway, bridge, and causeway supplies and materials, with the approval of the board;

(l) from time to time, make reports and estimates of all matters relating to highways and bridges when required by the board; and

(m) perform other duties required by law.

(3) The surveyor must receive the annual salary provided by law for salaried county surveyors and other county officials.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; R.C.M. 1947, 16-3302(4); amd. Sec. 1, Ch. 336, L. 1995.

Cross-References

Salary of County Surveyors, 7-4-2503.

7-4-2813. Maintenance of records. (1) The county surveyor shall keep in the office a record of all surveys and plats made or caused to be made by the surveyor, to be recorded in proper books provided for that purpose. The county surveyor shall also keep on file and for record, in suitable plat books provided for that purpose, copies of all plats made or caused to be made by the surveyor and have recorded in the books a description of every public highway within the county.

(2) All books of record, together with original drawings and the original book or books of field notes, calculations, and computations, are and remain the property of the county and must be preserved as county records.

History: En. Sec. 3, Ch. 50, L. 1919; re-en. Sec. 4837, R.C.M. 1921; re-en. Sec. 4837, R.C.M. 1935; R.C.M. 1947, 16-3303; amd. Sec. 436, Ch. 61, L. 2007.

7-4-2814. Preparation of surveys. (1) (a) The county surveyor shall:

(i) make any survey that is required by order of the court or upon application of any person;

(ii) keep a correct and fair record of all surveys made by the county surveyor;

(iii) number the surveys progressively in the order made; and

(iv) preserve a copy of the field notes and calculations of each survey and endorse on the copy its proper number.

(b) A copy of the field notes and calculations of each survey and a fair and accurate plat, together with the certificate of survey, must be furnished by the county surveyor to any person upon payment of the fees allowed by law.

(c) In all surveys the courses must be expressed according to the true meridian and the variation of the magnetic meridian from the true meridian must be expressed on the plat with the date of the survey.

(2) The county surveyor shall also keep a correct and plain record of all surveys made by the county surveyor for the county or for individuals or corporations that pertain to the public roads or bridges in a book provided for that purpose by the county, which must be transmitted to the successor in office.

History: Ap. p. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907; re-en. Sec. 4839, R.C.M. 1921; Cal. Pol. C. Sec. 4268; re-en. Sec. 4839, R.C.M. 1935; Sec. 16-3305, R.C.M. 1947; Ap. p. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907; re-en. Sec. 4842, R.C.M. 1921; Cal. Pol. C. Sec. 4271; re-en. Sec. 4842, R.C.M 1935; Sec. 16-3308, R.C.M 1947; R.C.M. 1947, 16-3305, 16-3308; amd. Sec. 437, Ch. 61, L. 2007.

Cross-References

Fees — accountability, 7-4-2511 through 7-4-2520.

7-4-2815. Surveys involving land in two counties. (1) Any person owning or claiming lands which are divided by county lines and wishing to have the same surveyed may apply to the surveyor of any county in which any part of such land is situated. On such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

(2) When land the title to which is in dispute before any court is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: (1)En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907; re-en. Sec. 4840, R.C.M. 1921; Cal. Pol. C. Sec. 4269; re-en. Sec. 4840, R.C.M. 1935; Sec. 16-3306, R.C.M. 1947; (2)En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907; re-en. Sec. 4841, R.C.M. 1921; Cal. Pol. C. Sec. 4270; re-en. Sec. 4841, R.C.M 1935; Sec. 16-3307, R.C.M 1947; R.C.M. 1947, 16-3306, 16-3307.

7-4-2816 through 7-4-2820 reserved.

7-4-2821. Fees of county surveyor. The board of county commissioners shall set the county surveyor's fees by resolution.

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R.C.M. 1921; re-en. Sec. 4921, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1953; R.C.M. 1947, 25-235; amd. Sec. 1, Ch. 232, L. 1979.

Cross-References

Statement of fees to be posted, 7-4-2518.

Part 29
Office of County Coroner

Part Cross-References

Salary of County Coroners, 7-4-2504.

7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist the coroner or act in the coroner's absence.

(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, a deputy shall successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). The deputy shall also meet the requirements for advanced education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county.

History: En. 82-444 by Sec. 18, Ch. 530, L. 1977; R.C.M. 1947, 82-444; amd. Sec. 3, Ch. 367, L. 1987; amd. Sec. 438, Ch. 61, L. 2007.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-2902. Vacancy in office of county coroner or disqualification of coroner. (1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:

(a) is absent or unable to attend to duties or if the office of coroner is vacant and there are no qualified deputies available;

(b) is related to the deceased;

(c) is a potential party in an action concerning the death or the coroner's inquiry into the death may pose a conflict of interest;

(d) has not successfully completed the basic coroner course required in 7-4-2905 and there are no qualified deputies available; or

(e) is disqualified under the provisions of 46-4-201.

(2) The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county.

History: (1)En. Sec. 4494, Pol. C. 1895; re-en. Sec. 3070, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4289; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3405, R.C.M. 1947; (2)En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3405, 25-236(part); amd. Sec. 3, Ch. 371, L. 1979; amd. Sec. 2, Ch. 367, L. 1987; amd. Sec. 439, Ch. 61, L. 2007.

7-4-2903. Stenographer for coroner in certain counties. In each county having a population of 45,000 or more by the latest federal census enumeration, the coroner may, with the consent of the county commissioners, appoint a stenographer. The stenographer shall hold such position during the pleasure of the coroner making the appointment and shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board.

History: En. Sec. 1, Ch. 8, L. 1911; re-en. Sec. 4855, R.C.M. 1921; re-en. Sec. 4855, R.C.M. 1935; amd. Sec. 1, Ch. 233, L. 1947; amd. Sec. 1, Ch. 211, L. 1951; R.C.M. 1947, 16-3408.

7-4-2904. Qualifications for office of county coroner. (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state or jurisdiction.

(2) Each coroner, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the individual has satisfactorily completed the basic coroner course of study provided in 7-4-2905 or that the individual has completed the equivalent educational requirements approved by the attorney general; or

(ii) the individual intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of the duties as coroner, a basic coroner course was not offered. A coroner forfeits office for failure to take and satisfactorily complete the next offering of the basic coroner course.

History: **En. Sec. 1, Ch. 367, L. 1987; amd. Sec. 440, Ch. 61, L. 2007.**

7-4-2905. Coroner education and continuing education. (1) Coroner education must be conducted by the Montana public safety officer standards and training council established in 2-15-2029. The council may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The council shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the council, must be completed before the first Monday in January following the election. The council may conduct other basic coroner courses at times it considers appropriate.

(b) The council shall annually conduct a 16-hour advanced coroner course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the council, at least once every 2 years results in forfeiture of office. The council may adopt rules providing a procedure to extend the 2-year period because of exigent circumstances.

History: **En. Sec. 4, Ch. 367, L. 1987; amd. Sec. 1, Ch. 118, L. 1993; amd. Sec. 1, Ch. 24, L. 1995; amd. Sec. 6, Ch. 506, L. 2007.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

7-4-2906 through 7-4-2910 reserved.

7-4-2911. Duties of county coroner. The county coroner shall:

(1) hold inquests as provided in Title 46, chapter 4, parts 1 and 2;

(2) inquire into the cause, manner, and circumstances of all human deaths, as required in 46-4-122, and establish the identity of the deceased person;

(3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;

(4) maintain records of inquiries as required by good practice and by law;

(5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which the coroner is making an inquiry;

(6) if a law enforcement agency does not have jurisdiction of the case, preserve evidence involving any human death, pursuant to the coroner's authority, including placing under the coroner's control, to the extent necessary, any personal and real property that may be related to or involved in the death;

(7) witness and certify deaths that are the result of a judicial order;

(8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;

(9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to 46-4-122; and

(10) in the cases specified in 25-3-205, discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for similar services.

History: **(1)En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R.C.M. 1921; Cal. Pol. C. Sec. 4285; re-en. Sec. 4848, R.C.M. 1935; amd. Sec. 22, Ch. 530, L. 1977; Sec. 16-3401, R.C.M. 1947; (2)Ap. p. Sec. 4495, Pol. C. 1895; re-en. Sec. 3071, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4290; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3406, R.C.M. 1947; Ap. p. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3401, 16-3406, 25-236(part); amd. Sec. 4, Ch. 371, L. 1979; amd. Sec. 20, Ch. 443, L. 1979; amd. Sec. 10, Ch. 660, L. 1991; amd. Sec. 441, Ch. 61, L. 2007.**

Cross-References

Duty of Coroner to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

7-4-2912. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907; re-en. Sec. 4854, R.C.M. 1921; re-en. Sec. 4854, R.C.M. 1935; R.C.M. 1947, 16-3407; amd. Sec. 21, Ch. 443, L. 1979.

7-4-2913. Payment of costs of inquest. Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement must be sent to the department of corrections for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R.C.M. 1921; re-en. Sec. 4857, R.C.M. 1935; amd. Sec. 86, Ch. 199, L. 1965; R.C.M. 1947, 16-3410; amd. Sec. 22, Ch. 443, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 27, Ch. 546, L. 1995.

7-4-2914. Statement required before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners shall require the coroner to file with the clerk of the board a statement, in writing and verified by affidavit, showing:

(1) the amount of money or other property belonging to the estate of the deceased person that has come into the coroner's possession since the last statement; and

(2) the disposition made of the property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R.C.M. 1921; Cal. Pol. C. Sec. 4288; re-en. Sec. 4851, R.C.M. 1935; R.C.M. 1947, 16-3404; amd. Sec. 442, Ch. 61, L. 2007.

7-4-2915. Custody and disposition of bodies held pending investigation. (1) In the course of an inquiry authorized under the provisions of 46-4-122, the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.

(2) A dead human body in the custody of a county coroner must be held until the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by the coroner to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner shall release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section.

History: En. Sec. 1, Ch. 378, L. 1979; amd. Sec. 11, Ch. 660, L. 1991; amd. Sec. 443, Ch. 61, L. 2007.

7-4-2916. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. Sec. 2, Ch. 378, L. 1979.

7-4-2917. Disposition of property of deceased — suicide note. (1) Any property of a decedent or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any investigating agency, or to be used as evidence in any related criminal court action.

(2) For the purposes of this section, "investigating agency" means any county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death.

(3) When such property or note is no longer needed for evidentiary purposes, it shall be given upon written request to the personal representative of the decedent appointed under Title 72 or, if no personal representative is appointed, to the decedent's family or whoever in the discretion of the county attorney should receive the property or the note.

History: En. Sec. 1, Ch. 408, L. 1983.

Cross-References

Return of crime victim's property, 46-24-206.

7-4-2918 through 7-4-2920 reserved.

7-4-2921. Repealed. Sec. 5, Ch. 371, L. 1979.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; R.C.M. 1947, 25-236(part).

7-4-2922. Repealed. Sec. 5, Ch. 371, L. 1979.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; R.C.M. 1947, 25-236(part).

7-4-2923. Computation of mileage for reimbursement. When a coroner serves more than one process in the same cause, not requiring more than one journey from the office, the coroner may receive mileage only for the more distant service, and mileage is not allowed for less than 1 mile actually traveled.

History: En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; R.C.M. 1947, 25-216(part); amd. Sec. 444, Ch. 61, L. 2007.

Cross-References

Mileage and expenses of Sheriff, 7-32-2143.

Part 30
County Offices

7-4-3001. Office of sheriff. The duties and functions of the sheriff's office are provided for in Title 7, chapter 32, part 21.

History: En. by Code Commissioner, 1979; amd. Sec. 7, Ch. 36, L. 2005.

7-4-3002. Office of county treasurer. The duties and functions of the treasurer's office are provided for in part 21, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3003. Office of county auditor. The duties and functions of the auditor's office are provided for in part 24, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3004. Office of public administrator. The powers and duties of the public administrator are defined by Title 72, chapter 15, and 72-5-415(2).

History: New section recommended by Code Commissioner, 1921; re-en. Sec. 4858, R.C.M. 1935; R.C.M. 1947, 16-3501; amd. Sec. 3, Ch. 362, L. 1985.

7-4-3005. Office of county superintendent of schools. The duties and functions of the office of county superintendent of schools are provided for in Title 20.

History: En. by Code Commissioner, 1979.

7-4-3006. Limitation on number of deputy district court clerks. The whole number of deputies allowed the clerk of the district court may not exceed one chief deputy and up to:

(1) six deputies in counties of the first or second class;

(2) four deputies in counties of the third or fourth class having more than one district judge;

(3) two deputies in counties of the third or fourth class having one district judge;

(4) one deputy in counties of the fifth, sixth, or seventh class.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 23, Ch. 443, L. 1979.

Cross-References

Clerk of District Court — powers and duties, Title 3, ch. 5, part 5.

Authorization to exceed limitation on number of deputies, 7-4-2402.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-3007. Qualifications for office of county assessor — forfeiture of office. (1) In addition to the qualifications set forth in 7-4-2201, each assessor, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the assessor has satisfactorily completed the assessor certification training as provided in 15-7-106(4); or

(ii) the assessor intends to take the assessor certification training at the next offering.

(2) An assessor forfeits office for failure to take and satisfactorily complete the assessor certification training within 36 months after taking office by election or appointment or for failure to satisfactorily complete continuing education when conducted by the department of revenue, unless the board of county commissioners finds that:

(a) the assessor is excused for reasons beyond the assessor's control, including illness, a death in the family, or other good cause; or

(b) there is no other qualified person available for appointment as assessor.

(3) Subsections (1)(b) and (2) do not apply to county officers who are county assessors because their county office has been consolidated with the office of county assessor and who are not contractually required to perform property assessment duties for the department.

History: En. Sec. 1, Ch. 623, L. 1989; amd. Sec. 167, Ch. 27, Sp. L. November 1993.

Parts 31 through 40 reserved

Part 41

Municipal Officers in General

7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

(a) one mayor;

(b) two city council members from each ward; and

(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as provided in this part.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk;

(c) one city treasurer or finance officer or one city clerk-treasurer;

(d) one chief of police;

(e) one assessor;

(f) one street commissioner;

(g) one city jailer;

(h) one city surveyor; and

(i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation.

History: En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907; re-en. Sec. 4995, R.C.M. 1921; re-en. Sec. 4995, R.C.M. 1935; R.C.M. 1947, 11-701; amd. Sec. 1, Ch. 447, L. 1979; amd. Sec. 445, Ch. 61, L. 2007.

Cross-References

Classification of municipalities, 7-1-4111.

7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:

(a) one mayor;

(b) two city council members from each ward; and

(c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city, as provided in this part.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge must be filled by appointment by the governing body or by election or may appoint a justice of the peace or the city judge of another city as judge of the city court as provided in 3-11-205.

(4) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk, who is ex officio city assessor;

(c) one city treasurer or one city clerk-treasurer;
(d) one chief of police; and
(e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part); amd. Sec. 2, Ch. 447, L. 1979; amd. Sec. 1, Ch. 506, L. 1979; amd. Sec. 7, Ch. 543, L. 1987; amd. Sec. 3, Ch. 300, L. 1989; amd. Sec. 446, Ch. 61, L. 2007.

Cross-References

Classification of municipalities, 7-1-4111.

7-4-4103. Officers of towns. (1) The officers of a town consist of:
(a) one mayor;
(b) two city council members from each ward; and
(c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as provided in this part.

(3) The governing body of the town may by ordinance determine that the office of city judge must be filled either by election or by appointment or may appoint a justice of the peace or the city judge of another city to be judge of the city court as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:
(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;
(b) one marshal, who may be ex officio street commissioner; and
(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R.C.M. 1921; re-en. Sec. 4997, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1974; R.C.M. 1947, 11-703; amd. Sec. 1, Ch. 269, L. 1981; amd. Sec. 8, Ch. 543, L. 1987; amd. Sec. 4, Ch. 300, L. 1989; amd. Sec. 447, Ch. 61, L. 2007.

Cross-References

Classification of municipalities, 7-1-4111.

7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:
(1) who is not a citizen of the United States; and
(2) who has not met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R.C.M. 1921; re-en. Sec. 5007, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1961; R.C.M. 1947, 11-713; amd. Sec. 2, Ch. 506, L. 1979; amd. Sec. 2, Ch. 269, L. 1981.

7-4-4105. Authority to abolish appointive municipal offices. The city or town council may abolish, by a majority vote of the council, any office, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may discharge any officer so appointed.

History: En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907; re-en. Sec. 4999, R.C.M. 1921; re-en. Sec. 4999, R.C.M. 1935; R.C.M. 1947, 11-705; amd. Sec. 24, Ch. 443, L. 1979; amd. Sec. 3, Ch. 506, L. 1979.

7-4-4106. Authority to consolidate municipal offices. The city or town council may by ordinance consolidate any of the offices, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907; re-en. Sec. 5000, R.C.M. 1921; re-en. Sec. 5000, R.C.M. 1935; R.C.M. 1947, 11-706; amd. Sec. 4, Ch. 506, L. 1979.

7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.

(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment.

History: En. Secs. 4751, 4759, Pol. C. 1895; re-en. Secs. 3227, 3235, Rev. C. 1907; re-en. Secs. 5006, 5014, R.C.M. 1921; re-en. Secs. 5006, 5014, R.C.M. 1935; R.C.M. 1947, 11-712, 11-720; amd. Sec. 27, Ch. 575, L. 1981.

7-4-4108. Repealed. Sec. 2, Ch. 486, L. 1993.

History: Ap. p. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; Sec. 11-719, R.C.M. 1947; Ap. p. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907; re-en. Sec. 5027, R.C.M. 1921; re-en. Sec. 5027, R.C.M. 1935; Sec. 11-733, R.C.M. 1947; R.C.M. 1947, 11-719(part), 11-733.

7-4-4109. Official bond. Each officer of a city or town who is required to give bond shall file the bond, duly approved, within 10 days after receiving notice of election or appointment or, if notice is not received, then on or before the date fixed for the assumption of the duties of the office to which the officer is elected or appointed.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part); amd. Sec. 448, Ch. 61, L. 2007.

Cross-References

Official bonds, Title 2, ch. 9, parts 5 through 8.

7-4-4110. Duties of officers not otherwise provided for. (1) The city or town council has power to prescribe the duties of all officers of the city or town, subject to the limitations mentioned in this code.

(2) The duties of the street commissioner, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

History: (1)En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; Sec. 11-949, R.C.M. 1947; (2)En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R.C.M. 1921; re-en. Sec. 5028, R.C.M. 1935; Sec. 11-734, R.C.M. 1947; R.C.M. 1947, 11-734(part), 11-949(part).

7-4-4111. Determination of vacancy in municipal office. An office becomes vacant on the happening of any of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(3) the incumbent's resignation;

(4) the incumbent's removal from office;

(5) the incumbent's absence from the city or town continuously for 10 days without the consent of the council;

(6) the incumbent's open neglect or refusal to discharge duties;

(7) the incumbent's ceasing to be a resident of the city or town or, in the case of a city council member, ceasing to be a resident of the city council member's ward. This subsection does not apply to an appointed municipal officer who resides outside the city or town limits with the approval of the city or town governing body and within a distance of the city or town approved by the governing body.

(8) the incumbent's ceasing to discharge the duty of office for a period of 3 consecutive months, except when prevented by illness or when absent from the city or town by permission of the governing body;

(9) the incumbent's conviction of a felony or of any offense involving moral turpitude or a violation of official duties;

(10) the incumbent's refusal or neglect to file an official bond within the time prescribed;

(11) the decision of a competent tribunal declaring void the incumbent's election or appointment.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part); amd. Sec. 1, Ch. 233, L. 1981; amd. Sec. 1, Ch. 459, L. 1997.

Cross-References

Montana Recall Act, Title 2, ch. 16, part 6.

7-4-4112. Filling of vacancy. (1) When a vacancy occurs in any elective office, this position is considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office is limited to the unexpired term of the person who originally created the vacancy. Pending an election and qualification, the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified.

(2) If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as a city council member. The appointed city council member shall then appoint persons to any other vacant elective offices.

(3) A vacancy in the office of city council member must be filled from the ward in which the vacancy exists.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part); amd. Sec. 1, Ch. 457, L. 1981; amd. Sec. 1, Ch. 286, L. 1987; amd. Sec. 449, Ch. 61, L. 2007.

Cross-References

Elections, Title 13.

7-4-4113. Removal of appointed officer. The council, upon written charges to be entered upon their journal, after notice to the party, and after trial by the council, may remove any nonelected officer by vote of two-thirds of all the members-elect.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part).

7-4-4114. Municipal executive officers. (1) The executive officers of a city or town are the mayor, the marshal (if there is one), and such officers as the council may provide for assessment; collecting, auditing, safekeeping, and disbursing the revenue; and keeping the records and journals of the city or town.

(2) The mayor is the chief executive officer of the city or town.

History: (1)En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907; re-en. Sec. 5029, R.C.M. 1921; Cal. Pol. C. Sec. 4385; re-en. Sec. 5029, R.C.M. 1935; Sec. 11-801, R.C.M. 1947; (2)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; R.C.M. 1947, 11-801, 11-802(part); amd. Sec. 25, Ch. 443, L. 1979.

Part 42
Compensation of Municipal Officers and Employees

Part Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-4201. Salary of officers. The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

History: Ap.p. Secs. 4763, 4789, Pol. C. 1895; re-en. Secs. 3239, 3258, Rev. C. 1907; re-en. Secs. 5018, 5028, R.C.M. 1921; re-en. Secs. 5018, 5028, R.C.M. 1935; Secs. 11-724, 11-734, R.C.M. 1947; Ap.p. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R.C.M. 1921; re-en. Sec. 5019, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969; Sec. 11-725, R.C.M. 1947; Ap.p. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R.C.M. 1921; re-en. Sec. 5022, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965; amd. Sec. 1, Ch. 189, L. 1967; Sec. 11-728, R.C.M. 1947; Ap.p. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R.C.M. 1921; re-en. Sec. 5023, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965; amd. Sec. 1, Ch. 155, L. 1967; Sec. 11-729, R.C.M. 1947; Ap.p. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R.C.M. 1921; re-en. Sec. 5025, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967; amd. Sec. 2, Ch. 146, L. 1974; Sec. 11-731, R.C.M. 1947; R.C.M. 1947, 11-724, 11-725(part), 11-728, 11-729, 11-731, 11-734(part); amd. Sec. 1, Ch. 221, L. 1979; amd. Sec. 1, Ch. 428, L. 1979; amd. Sec. 26, Ch. 443, L. 1979.

7-4-4202. Repealed. Sec. 37, Ch. 291, L. 2009.

History: (1), (4)En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R.C.M. 1921; re-en. Sec. 5107, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969; Sec. 11-1815, R.C.M. 1947; (2), (3)En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R.C.M. 1921; re-en. Sec. 5024, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1943; amd. Sec. 1, Ch. 234, L. 1947; amd. Sec. 1, Ch. 10, L. 1951; amd. Sec. 1, Ch. 30, L. 1957; Sec. 11-730, R.C.M. 1947; R.C.M. 1947, 11-730, 11-1815.

7-4-4203 through 7-4-4210 reserved.

7-4-4211. Designation of person to receive decedent's warrants or paychecks — reissuance. A person employed by a municipality may file with the appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent. The employee may change the designation from time to time. A designated person shall claim the warrants or paychecks from the city treasurer or town clerk, whichever is applicable, and on sufficient proof of identity, the city treasurer or town clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.

History: En. Sec. 2, Ch. 113, L. 1983; amd. Sec. 450, Ch. 61, L. 2007.

Cross-References

State employees designation, 2-18-412.

County employees designation, 7-4-2521.

Part 43
Office of Mayor

7-4-4301. Qualifications for mayor. (1) A person is not eligible for the office of mayor unless the person:

(a) is at least 21 years old;

(b) has been a resident of the state for at least 3 years; and

(c) has been a resident for at least 2 years preceding the election to office of the city or town or an area that has been annexed by the city or town.

(2) The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R.C.M. 1921; re-en. Sec. 5004, R.C.M. 1935; amd. Sec. 1, Ch. 76, L. 1961; amd. Sec. 1, Ch. 177, L. 1974; R.C.M. 1947, 11-710; amd. Sec. 2, Ch. 420, L. 1979; amd. Sec. 27, Ch. 443, L. 1979; amd. Sec. 451, Ch. 61, L. 2007.

Cross-References

Filling vacancy in office, 7-4-4112.

7-4-4302. Term of office. The mayor shall hold office for a term of 4 years and until the qualification of a successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3324, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part); amd. Sec. 452, Ch. 61, L. 2007.

7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens. The mayor has power to:

(1) nominate and, with the consent of the council, appoint all nonelective officers of the city or town provided for by the council, except as provided in this title;

(2) suspend and, with the consent of the council, remove any nonelective officer, stating in the suspension or removal the cause for the removal;

(3) supervise the discharge of official duty by all subordinate officers;

(4) require of any of the officers of a city or town an exhibit of the officer's books and papers;

(5) request that the governor call out the militia to aid the mayor in suppressing riots or other disorderly conduct, preventing and extinguishing fires, securing the peace and safety of the city or town, or carrying into effect any law or ordinance.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part); amd. Sec. 9, Ch. 485, L. 1997.

Cross-References

Power of Mayor to call in substitute City Judge, 3-11-203.

Appointment of police officers, 7-32-4111 through 7-32-4113.

Appointment of firefighters, 7-33-4106 through 7-33-4108.

Power to solemnize marriage, 40-1-301.

Power of Mayor to request assistance of highway patrol officer, 44-1-1001.

7-4-4304. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-4-4305. Power to grant pardons. The mayor has power to grant pardons and remit fines and forfeitures for offenses against city or town ordinances when in the mayor's judgment public justice would be thereby subserved. The mayor must report all pardons granted, with the reasons therefor, to the next council.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(15).

7-4-4306. Extraterritorial powers. The mayor has power to exercise the power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations of the city or town. The board of county commissioners of the county affected by the ordinance and the local health board, if a local health board exists in the area affected by the ordinance, shall approve the ordinance by a majority vote.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(17); amd. Sec. 10, Ch. 485, L. 1997.

Part 44
Office of City Council Member

7-4-4401. Qualifications for city council member. A person is not eligible for the office of city council member unless the person is a resident for at least 60 days preceding the election to office of the ward electing the person or of an area that has been annexed by the city or town and placed in the ward.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R.C.M. 1921; re-en. Sec. 5008, R.C.M. 1935; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967; R.C.M. 1947, 11-714; amd. Sec. 3, Ch. 420, L. 1979; amd. Sec. 28, Ch. 443, L. 1979; amd. Sec. 453, Ch. 61, L. 2007.

7-4-4402. Term of office. (1) Except as provided in subsection (2), a city council member shall hold office for a term of 4 years and until the qualification of a successor.

(2) At the first annual election held after the organization of a city or town under this title, the electors of the city or town shall elect two city council members from each ward, who shall, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of 4 years and one for a term of 2 years and until the qualification of their successors. In the succeeding elections, one city council member from each ward must be elected for a 4-year term.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; Sec. 11-709, R.C.M. 1947; Ap. p. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907; re-en. Sec. 5005, R.C.M. 1921; re-en. Sec. 5005, R.C.M. 1935; Sec. 11-711, R.C.M. 1947; R.C.M. 1947, 11-709(part), 11-711; amd. Sec. 29, Ch. 443, L. 1979; amd. Sec. 454, Ch. 61, L. 2007.

7-4-4403. Officers of city or town council. The council may elect a president who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in the president's place.

History: En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907; re-en. Sec. 5032, R.C.M. 1921; re-en. Sec. 5032, R.C.M. 1935; R.C.M. 1947, 11-804; amd. Sec. 455, Ch. 61, L. 2007.

Part 45
Office of Municipal Clerk

7-4-4501. Duties of city clerk related to administration. It is the duty of the clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council;

(5) take and administer oaths, but must not charge or receive any fees therefor;

(6) perform such other and further duties as the council may prescribe.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4502. Duties of city clerk related to city records and papers. The city clerk shall:

(1) file and keep all records, books, papers, or property belonging to the city or town and deliver the documents or property to the clerk's successor when qualified;

(2) make and certify copies of all records, books, and papers in the clerk's possession on the payment of fees that are allowed county clerks, which must be paid into the city treasury;

(3) make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in the clerk's office.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part); amd. Sec. 456, Ch. 61, L. 2007.

Cross-References

Public documents open for public inspection, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-4-4503. City ordinance book. The book required by 7-4-4501(2) is called "The Ordinance Book".

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4504 through 7-4-4510 reserved.

7-4-4511. Duties of town clerk related to administration. It shall be the duty of the town clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

Cross-References

Public documents open for public inspection, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-4-4512. Duties of town clerk related to town records and papers. The town clerk shall file and keep all records, books, papers, or property belonging to the town and to deliver the documents or property to a successor when qualified.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 457, Ch. 61, L. 2007.

7-4-4513. Town ordinance book. The book required by 7-4-4511(2) is called "The Ordinance Book".

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

Part 46
Office of City Attorney

Part Cross-References

Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-4601. Qualifications for city attorney. To be appointed, the city attorney shall be a person who has been licensed to practice as an attorney in this state.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

Cross-References

Practice of law, Art. VII, sec. 2, Mont. Const.; Title 37, ch. 61.

7-4-4602. Appointment — term of office. (1) The city attorney must be appointed by the mayor, subject to approval by the city council.

(2) The city attorney shall hold office for 2 years unless suspended or removed as provided by law.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 2, Ch. 428, L. 1979; amd. Sec. 458, Ch. 61, L. 2007.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-4-4603. Removal or suspension. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by law or the ordinances of the city.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

Cross-References

Removal of appointed officer, 7-4-4113.
Official misconduct, 45-7-401.

7-4-4604. Duties. The city attorney shall:

(1) appear before the city court and other courts and prosecute on behalf of the city;

(2) serve upon the attorney general within 10 days of the filing or receipt a copy of any notice of appeal that the city attorney files or receives in a criminal proceeding;

(3) when required, draft for the city council contracts and ordinances for the government of the city;

(4) when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the city; and

(5) perform other duties that pertain to the functions of the city council or that the city council prescribes by resolution.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 3, Ch. 428, L. 1979; amd. Sec. 1, Ch. 154, L. 2005.

7-4-4605. Employment of special or additional counsel. Nothing in this part shall be taken or construed as preventing the city council from employing in special cases on a contract basis:

(1) the city attorney to perform services not specifically provided for under 7-4-4604; or

(2) additional or other counsel.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 4, Ch. 428, L. 1979.

7-4-4606. Legal services for city of third class. A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county, either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part).

Cross-References

Classifications of cities, 7-1-4111.
Interlocal agreements, Title 7, ch. 11, part 1.

Part 47
Office of City Treasurer

7-4-4701. Term of office for city treasurer. In cities of the first, second, and third classes, a city treasurer shall hold office for a term of 4 years and until the qualification of a successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part); amd. Sec. 459, Ch. 61, L. 2007.

Cross-References

Classification of municipalities, 7-1-4111.
Municipal budget law, Title 7, ch. 6, parts 43 through 46.

CHAPTER 5
GENERAL OPERATION AND CONDUCT OF BUSINESS

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7-5-2110. Community decay defined.
7-5-2111. Control of community decay.
7-5-2112. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting.
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7-5-2122. Meetings of board of county commissioners.
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7-5-2124. Repealed.
7-5-2125. Open meetings.
7-5-2126. Attendance at board meetings by sheriff.
7-5-2127. Subpoena power of county commissioners.
7-5-2128. Fees of officers and witnesses.
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7-5-2144. Membership in associations of county treasurers.
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7-5-2308. Department of administration as purchasing agent.
7-5-2309. Optional bidding preference for county resident.
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7-5-4109. Control of conflict of interest.
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7-5-4141. Membership in organizations of municipal officers.
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Part 42 — Municipal Ordinances and Resolutions

7-5-4201. Municipal ordinances.
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7-5-4206. Procedure to veto ordinance or resolution.
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7-5-4219. Repealed.
7-5-4220. Repealed.
7-5-4221. Repealed.
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Part 43 — Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts.
7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.
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7-5-4307. Sale or trade-in of old supplies or equipment.
7-5-4308. Procedure to modify contract.
7-5-4309. Repealed.
7-5-4310. Use of public auction to make purchase.
7-5-4311 through 7-5-4314 reserved.
7-5-4315. Energy performance contracts exempt.
7-5-4316 through 7-5-4320 reserved.
7-5-4321. Grant of exclusive franchise — election required.
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Part 44 — Municipal Elections

7-5-4401. Division of municipalities into wards.
7-5-4402. Repealed.
7-5-4403. Repealed.
7-5-4404. Repealed.
7-5-4405. Repealed.
7-5-4406. Repealed.
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Part 1
Local Government Ordinances, Resolutions, and Initiatives and Referendums

Part Cross-References

Other similar powers for:
Option 2 of city-county consolidation, 7-3-1222 through 7-3-1232.
Municipal commission government, 7-3-4222.
Municipal commission-manager government, 7-3-4324 through 7-3-4327.
County resolutions, Title 7, ch. 5, part 22.
Municipal ordinances and resolutions, Title 7, ch. 5, part 42.
County ordinance restricting phosphorus sales, Title 75, ch. 7, part 4.

7-5-101. Definition. As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101; amd. Sec. 460, Ch. 61, L. 2007.

7-5-102. Construction of certain sections. Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).

7-5-103. Ordinance requirements. (1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.

(2) An ordinance passed may not contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.

(4) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5); amd. Sec. 461, Ch. 61, L. 2007.

Cross-References

County control of litter, 7-5-2109.

Regulation of pawnbrokers located outside incorporated city or town, 7-21-2120.

Restriction on local government regulation of firearms, 45-8-351.

Regulation of gang activity, Title 45, ch. 8, part 4.

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).

7-5-107. Register of ordinances and codification. (1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).

7-5-108. Adoption and amendment of codes by reference. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.

7-5-109. Penalty for violation of ordinance. (1) Except as provided in subsection (2), a local government may fix penalties for the violation of an ordinance that do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104; amd. Sec. 1, Ch. 597, L. 1993.

7-5-110 through 7-5-120 reserved.

7-5-121. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).

7-5-122. Resolution veto procedure. If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.

7-5-123. Effective date of resolutions. All resolutions shall be immediately effective unless a delayed effective date is specified.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).

7-5-124 through 7-5-130 reserved.

7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative shall not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or

(d) the levy of special assessments pledged for the payment of principal and interest on bonds.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2).**

Cross-References

Right of initiative and referendum, Art. XI, sec. 8, Mont. Const.

7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting a referendum on the ordinance delays the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 60 days of the effective date of the ordinance suspends the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum must:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part;

(d) contain the signatures of 15% of the registered electors of the local government; and

(e) contain transition provisions if the measure changes terms of office or forms of government.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979; amd. Sec. 2, Ch. 359, L. 1991; amd. Sec. 1, Ch. 374, L. 2001.**

7-5-133. Processing of petition. (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question must be submitted to the electors at the next regular or primary election.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 24, Ch. 387, L. 1995.**

7-5-134. Signatures — submission for approval — statement of purpose and implication. (1) In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

(2) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form.

(3) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit. The local government attorney shall review the sample petition for form and compliance with 7-5-131 and 7-5-132 and prepare a concise ballot statement not exceeding 100 words. The ballot statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.

(4) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

FOR weekly commission meetings.

AGAINST weekly commission meetings.

(5) If the petition is rejected as to form, the election administrator must send written notice and a statement of the reasons for rejection to the person who submitted the sample petition within 21 days after submission of the sample.

(6) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.

(7) All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form.

History: (1)En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107; (2)—(7)En. Secs. 1, 2, Ch. 69, L. 1981; amd. Sec. 3, Ch. 359, L. 1991.

7-5-135. Suit to determine validity and constitutionality of petition and proposed action. (1) The governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional. The suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.

(2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.

(3) If the defendant prevails, the defendant is entitled to be reimbursed by the local government for costs and reasonable attorney's fees incurred.

(4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 1, Ch. 567, L. 1985; amd. Sec. 462, Ch. 61, L. 2007.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition, any amended ordinance proposed by petition, or any referendum on an ordinance entitled to be submitted to the electors must be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election to be held in conjunction with a regular or primary election; or

(b) the governing body calls for a special election on the question to be held in conjunction with a regular or primary election.

(2) A special election may not be held sooner than 75 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 75 days prior to the next regular election, the election must be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance that is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed must be published.

(5) The question must be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979; amd. Sec. 16, Ch. 250, L. 1985; amd. Sec. 25, Ch. 387, L. 1995.

7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum. If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

7-5-138 and 7-5-139 reserved.

7-5-140. Recordkeeping. A city, town, or county that has the authority to require a private entity to keep records may prescribe the form and content of the records but may not prescribe the method of keeping the required records.

History: En. Sec. 16, Ch. 459, L. 1997.

Part 2
Operation of Consolidated Units of Local Government

Part Cross-References

Business improvement districts, Title 7, ch. 12, part 11.

7-5-201. Operation of self-government consolidated units of local government. (1) Except as provided in 7-3-1105(2) and 7-3-1222(6), whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where the units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have that official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.

History: En. 47A-3-108 by Sec. 11, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-108; amd. Sec. 5, Ch. 466, L. 2003.

Part 3
Local Government Elections
(Repealed)

7-5-301. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 47A-3-301 by Sec. 1, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-301.

7-5-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 47A-3-302 by Sec. 2, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-302; amd. Sec. 1, Ch. 359, L. 1979.

7-5-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 47A-3-303 by Sec. 3, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-303.

7-5-304 through 7-5-310 reserved.

7-5-311. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 11, Ch. 368, L. 1969; R.C.M. 1947, 23-2801.

Parts 4 through 20 reserved

Part 21
Conduct of County Government

Part Cross-References

Business improvement districts, Title 7, ch. 12, part 11.

7-5-2101. General authority of county commissioners. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

History: (1)En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; Sec. 16-1024, R.C.M. 1947; (2)En. Subd. 25, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.24, R.C.M. 1935; Sec. 16-1027, R.C.M. 1947; R.C.M. 1947, 16-1024(part), 16-1027.

Cross-References

Restriction on local government regulation of firearms, 45-8-351.

7-5-2102. Promulgation and enforcement of rules. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary.

History: En. Subd. 23, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.22, R.C.M. 1935; R.C.M. 1947, 16-1025.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-5-2103. Division of county into districts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to divide the counties into township, school, road, and other districts required by law; change the same; and create others as convenience requires by consolidation of two or more townships or otherwise.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

Cross-References

School districts — establishment — boundary changes, Title 20, ch. 6, parts 2 through 4.

7-5-2104. Direction of lawsuits. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to direct and control the prosecution and defense of all suits to which the county is a party.

History: En. Subd. 15, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.14, R.C.M. 1935; R.C.M. 1947, 16-1017.

Cross-References

Duty of County Attorney, 7-4-2711.

7-5-2105. Authority to contract for printing and supplies. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to contract for the county printing and to provide books and stationery for county officers.

History: En. Subd. 20, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.19, R.C.M. 1935; R.C.M. 1947, 16-1022.

Cross-References

County printing, Title 18, ch. 7, part 4.

7-5-2106. Control of conflict of interest. No member of the board must be directly or indirectly interested:

(1) in any property purchased for the use of the county;

(2) in any purchase or sale of property belonging to the county; or

(3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

History: **En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R.C.M. 1921; Cal. Pol. C. Sec. 4077; re-en. Sec. 4606, R.C.M. 1935; R.C.M. 1947, 16-1804.**

Cross-References

Standards of conduct, Title 2, ch. 2.
Official misconduct, 45-7-401.

7-5-2107. Employment of personnel by county commissioners. The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

History: **En. Sec. 1, Ch. 309, L. 1973; R.C.M. 1947, 16-913; amd. Sec. 2, Ch. 109, L. 1979.**

Cross-References

Nepotism prohibited in public employment practices, Title 2, ch. 2, part 3.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-5-2108. County work week. All full-time salaried county employees shall work a minimum of 40 hours per week.

History: **En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).**

Cross-References

Work periods — Sheriff's Office, 7-4-2509.
Hours of labor — county government, 39-4-107.

7-5-2109. County control of litter. (1) (a) Except as provided in 7-5-2112, a governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance does not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(c) The ordinance does not apply to a "notice of violation" card placed on a motor vehicle illegally parked in a disability parking space.

(2) Except as provided in 7-5-2112, the governing body of a county may establish a fine not to exceed $200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment.

History: **En. Sec. 1, Ch. 508, L. 1983; amd. Sec. 6, Ch. 415, L. 1991; amd. Sec. 1, Ch. 406, L. 1993; amd. Sec. 2, Ch. 67, L. 1997.**

7-5-2110. Community decay defined. (1) In 7-5-2111, "community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property.

(2) "Community decay" as used in 7-5-2111 may not be construed or defined to apply to:

(a) normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations; or

(b) normal activities at a shooting range.

History: **En. Sec. 1, Ch. 411, L. 1985; amd. Sec. 7, Ch. 415, L. 1991.**

Cross-References

Nuisances, Title 27, ch. 30.

7-5-2111. Control of community decay. (1) The governing body of a county may regulate, control, and prohibit conditions that contribute to community decay on or adjacent to any public roadway within the county by adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) An ordinance adopted under subsection (1) may include time limits for removal or shielding of such conditions as considered appropriate by the governing body.

(3) Nothing in this section restricts the governing body from enacting community decay controls affecting only portions of the county.

(4) Nothing in this section or 7-5-2110 may be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution that is more restrictive than the provisions of this section or 7-5-2110.

(5) For the purposes of enforcing an ordinance adopted under subsection (1), the county governing body may provide that, after giving due notice, in writing, of violation and upon the failure of the property owner to comply with the ordinance, officers and employees of the county may enter upon the property for the specific purpose of abating the violation of the ordinance and may assess the property owner for the actual costs for the abatement. Nonpayment of such an assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes is enforced.

History: En. Sec. 2, Ch. 411, L. 1985.

7-5-2112. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting. (1) A person may not throw away lighted matches, tobacco, cigarettes, cigars, or other lighted material on a forest road, private road, city street, county road, public highway, or railroad right-of-way, except lighted materials used as safety signaling devices, in this state.

(2) A person may not empty an ashtray containing matches, ashes, cigarette or cigar refuse, or other related material on a forest road, private road, city street, county road, public highway, or railroad right-of-way in this state.

(3) A person convicted of violating subsection (1) or (2) shall be fined a minimum of $100.

(4) Municipalities, the forest service, county governments, property owners, public transit operators, federal highway administrators, and any other appropriate entity may, at their discretion, post copies of this section in conspicuous locations.

History: En. Sec. 1, Ch. 67, L. 1997.

7-5-2113 through 7-5-2120 reserved.

7-5-2121. Administration of oaths. Any member of the board of county commissioners may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

Cross-References

Oaths — generally, Title 1, ch. 6.

7-5-2122. Meetings of board of county commissioners. (1) The governing body of the county shall establish by resolution a regular meeting date and notify the public of that date.

(2) The governing body of the county, except as may be otherwise required of them, may meet at the county seat of their respective counties at any time for the purpose of attending to county business. Commissioners may, by resolution and prior 2 days' posted public notice, designate another meeting time and place.

History: En. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R.C.M. 1921; Cal. Pol. C. Sec. 4032; amd. Sec. 1, Ch. 35, L. 1929; re-en. Sec. 4462, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973; amd. Sec. 1, Ch. 27, L. 1975; R.C.M. 1947, 16-910.

7-5-2123. Publication of board proceedings and annual financial statement. (1) (a) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to publish in a newspaper at the adjournment of each session of the board, in full and complete detail or in summary form or by reference, with the full and complete text made available on request, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings.

(b) The board may publish the county clerk's annual statement of the financial condition of the county, in full and complete detail or in summary form. If the board does not publish the annual statement in complete detail or in summary form, it shall publish a notice that the annual statement is available and will be provided upon request from the county clerk.

(2) Publication in full, in summary, or by reference of the minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of

the financial statement or notice of the availability of the financial statement must be made within 30 days after the presentation of the financial statement to the board. The board may not allow or order paid any claim for any publication of minutes and records of proceedings or annual financial statement unless the publication is made within the time prescribed in this subsection.

History: **En. Subd. 21, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.20, R.C.M. 1935; R.C.M. 1947, 16-1023; amd. Sec. 1, Ch. 193, L. 1985; amd. Sec. 1, Ch. 194, L. 1989; amd. Sec. 1, Ch. 299, L. 1995.**

Cross-References

County printing, Title 18, ch. 7, part 4.

7-5-2124. Repealed. Sec. 15, Ch. 311, L. 1979.

History: **En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).**

7-5-2125. Open meetings. All meetings of the board of county commissioners must be public.

History: **En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part).**

Cross-References

Open meetings, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

7-5-2126. Attendance at board meetings by sheriff. The board of county commissioners has the power to direct the sheriff to attend, in person or by deputy, all the meetings of the board; to preserve order; and to serve notices or citations as directed by the board.

History: **En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).**

7-5-2127. Subpoena power of county commissioners. (1) The board may, by its presiding officer or the presiding officer of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

(2) When served, a witness is bound to attend and to answer all questions that the witness would be bound to answer before any court. Disobedience to the subpoena or to an order to attend or to testify may be enforced by the board, and for that purpose, the board has all the powers conferred by and the witness is subject to all the provisions of Title 26, chapter 2, parts 1 and 2; 26-2-303; and Rule 45(c), M.R.Civ.P.

History: **(1)En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907; re-en. Sec. 4517, R.C.M. 1921, Cal. Pol. C. Sec. 4067; re-en. Sec. 4517, R.C.M. 1935; Sec. 16-1158, R.C.M. 1947; (2)En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907; re-en. Sec. 4518, R.C.M. 1921; Cal. Pol. C. Sec. 4068; re-en. Sec. 4518, R.C.M. 1935; Sec. 16-1159, R.C.M. 1947; R.C.M. 1947, 16-1158, 16-1159; amd. Sec. 463, Ch. 61, L. 2007.**

7-5-2128. Fees of officers and witnesses. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: **En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907; re-en. Sec. 4519, R.C.M. 1921; Cal. Pol. C. Sec. 4069; re-en. Sec. 4519, R.C.M. 1935; R.C.M. 1947, 16-1160.**

Cross-References

Service of process fees, 7-32-2141.

Witness fees for courts, Title 26, ch. 2, part 5.

7-5-2129. Minute book to be kept by board. The board of county commissioners shall cause to be kept a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings.

History: **En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4461, R.C.M. 1921; Cal. Pol. C. Sec. 4031; re-en. Sec. 4461, R.C.M. 1935; R.C.M. 1947, 16-909; amd. Sec. 13, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 deleted former (2) through (4) that read: "(2) a "Road Book" containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts or relating to road supervisors and their reports and accounts;

(3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required;

(4) a "Warrant Book" in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book and with the date, amount, on what account, and name of payee"; and made minor changes in style. Amendment effective October 1, 2009.

7-5-2130. Records to be signed. The records must be signed by the presiding officer and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R.C.M. 1921; Cal. Pol. C. Sec. 4029; re-en. Sec. 4459, R.C.M. 1935; R.C.M. 1947, 16-907(part); amd. Sec. 464, Ch. 61, L. 2007.

7-5-2131. Records to be available to public. The books, records, and accounts must be kept at the office of the clerk and must be open for public inspection free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part); amd. Sec. 12, Ch. 420, L. 1993.

Cross-References

Public inspection of records, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-5-2132. Destruction of county records. Upon the order of the board of county commissioners and with the written approval of the local government records destruction subcommittee provided for in 2-6-403, a county officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.

History: (1)En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; Sec. 59-514, R.C.M. 1947; (2)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-514(1), 59-516(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 430, L. 1985; amd. Sec. 13, Ch. 420, L. 1993.

Cross-References

Preservation of records, Title 22, ch. 3, part 2.

7-5-2133. Convenience fee for electronic county government services. (1) The county may charge a convenience fee and may allow county departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services.

History: En. Sec. 1, Ch. 264, L. 2003.

7-5-2134 through 7-5-2140 reserved.

7-5-2141. Membership in associations of counties. The boards of county commissioners of the several counties of Montana are hereby authorized and empowered to:

(1) take out county membership in and cooperate with associations and organizations of other counties or county officials of this state and of other states for the furtherance of good government and the protection of county interests; and

(2) pay for such membership in such associations or organizations with county funds.

History: En. Sec. 1, Ch. 104, L. 1947; R.C.M. 1947, 16-1034.

7-5-2142. Membership in associations of clerk and recorders. (1) The county clerk and recorders of the counties of Montana may take out county membership in and cooperate with associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerk and recorders of the state are allowed actual transportation expenses and per diem for attendance at any general meeting of the Montana association of county clerk and recorders held within the state, and the proportionate expenses and charges against each county as a member of the association must be paid by the county.

History: Ap. p. Sec. 1, Ch. 84, L. 1963; Sec. 16-2926, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2926, 25-508(4); amd. Sec. 1, Ch. 215, L. 1997.

7-5-2143. Membership in associations of clerks of district courts. (1) The county clerks of the district courts of the counties of Montana may take out county membership in and cooperate with associations and organizations of county clerks of the district courts of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerks of the district courts of the state are allowed actual transportation expenses and per diem for attendance at any general meeting of the Montana association of clerks of court held within the state, and the proportionate expenses and charges against each county as a member of the association must be paid by the county.

History: Ap. p. Sec. 1, Ch. 64, L. 1967; Sec. 16-3006, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-3006, 25-508(5); amd. Sec. 2, Ch. 215, L. 1997.

7-5-2144. Membership in associations of county treasurers. (1) County treasurers may take out county membership in and cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests.

(2) All county treasurers of the state are allowed actual transportation expenses and per diem for attendance at any general meeting of the Montana association of county treasurers held within the state, and the proportionate expenses and charges against each county as a member of the association must be paid by the county.

History: (1)En. Sec. 1, Ch. 114, L. 1973; Sec. 16-2627, R.C.M. 1947; (2)En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2627, 25-508(6); amd. Sec. 1, Ch. 216, L. 1993; amd. Sec. 3, Ch. 215, L. 1997.

7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) Unless otherwise provided by law, a county officer or employee may not receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at a convention, meeting, or other gathering as the officer or employee may by virtue of the office find it necessary to attend.

(2) Any member of the board of county commissioners is allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state, and the proportionate expenses and charges against each county as a member of the association must also be paid.

(3) County attorneys, sheriffs, assessors, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses for attending the meeting or convention of their peers.

(4) Any county officer paid on a per-day basis for performance of official duties is allowed the per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of the office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 2, Ch. 311, L. 1979; amd. Sec. 1, Ch. 384, L. 1981; amd. Sec. 1, Ch. 367, L. 1983; amd. Sec. 4, Ch. 215, L. 1997.

7-5-2146. Membership in associations of county school superintendents — payment of expenses. (1) The county superintendents of schools of the counties of Montana may obtain county membership in and cooperate with associations and organizations of county school superintendents of the state and of other states for the benefit of good government and the protection of county interests.

(2) County school superintendents of the counties of the state are entitled to expenses as provided for state officials in 2-18-501 through 2-18-503 for attendance at any general meeting of the Montana association of county school superintendents held within the state, and the proportionate expenses and charges against each county as a member of such an association must be paid by the county.

History: En. Sec. 1, Ch. 46, L. 1989.

Cross-References

County Superintendent of Schools, Title 20, ch. 3, part 2.

7-5-2147 through 7-5-2149 reserved.

7-5-2150. Compensated absence liability fund. (1) A board of county commissioners may establish a compensated absence liability fund for the purpose of paying for any accumulated amount of:

(a) sick leave that a county employee is entitled to upon termination of employment with the county in accordance with the provisions of 2-18-618; and

(b) vacation leave that an employee is entitled to upon termination of employment with the county.

(2) The compensated absence liability fund may be used only for the purpose provided in this section.

(3) The compensated absence liability fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

(4) The maximum amount in the fund may not exceed the amount necessary to pay for accumulated sick leave and accumulated vacation leave of county employees on June 30 of the prior fiscal year.

History: En. Sec. 1, Ch. 69, L. 2009.

Compiler's Comments

Effective Date: Section 3, Ch. 69, L. 2009, provided that this section is effective on passage and approval. Approved March 25, 2009.

Part 22
County Resolutions
(Repealed)

7-5-2201. Repealed. Sec. 3, Ch. 309, L. 1993.

History: En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).

7-5-2202. Repealed. Sec. 3, Ch. 309, L. 1993.

History: En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).

7-5-2203 through 7-5-2210 reserved.

7-5-2211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2212. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2214. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(3).

7-5-2215. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Secs. 4, 10, Ch. 64, L. 1973; R.C.M. 1947, 37-304, 37-310.

7-5-2216. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 11, Ch. 64, L. 1973; R.C.M. 1947, 37-311.

7-5-2217. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Secs. 2, 5, 6, Ch. 64, L. 1973; R.C.M. 1947, 37-302, 37-305, 37-306.

7-5-2218. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 64, L. 1973; R.C.M 1947, 37-307.

7-5-2219. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

7-5-2220. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 64, L. 1973; R.C.M. 1947, 37-309.

7-5-2221. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).**

7-5-2222. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).**

Part 23
County Contracts

Part Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304 and Title 18, chapter 2, part 5, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of $50,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309 and except as provided in Title 18, chapter 2, part 5, every contract subject to bidding must be let to the lowest responsible bidder.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 1, Ch. 134, L. 1981; amd. Sec. 6, Ch. 349, L. 1985; amd. Sec. 1, Ch. 98, L. 1991; amd. Sec. 1, Ch. 203, L. 1997; amd. Sec. 1, Ch. 239, L. 1999; amd. Sec. 2, Ch. 252, L. 1999; amd. Sec. 1, Ch. 523, L. 2003; amd. Sec. 4, Ch. 574, L. 2005.**

7-5-2302. Repealed. Sec. 4, Ch. 239, L. 1999.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 2, Ch. 134, L. 1981; amd. Sec. 2, Ch. 98, L. 1991.**

7-5-2303. Use of public auction to make purchase. (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than $60,000.

(2) Compliance with the provisions of this section is considered as meeting the requirements of 7-5-2301.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 3, Ch. 134, L. 1981; amd. Sec. 3, Ch. 98, L. 1991.**

7-5-2304. Exemptions from competitive bidding requirements. The provisions of 7-5-2301 do not apply to contracts for:

(1) public printing entered into in accordance with the provisions of Title 18, chapter 7, part 4; and

(2) purchases that, in the opinion of the governing body, are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, or riot or insurrection; for the immediate preservation of order or the public health; for the restoration of a condition of usefulness that has been destroyed by accident, wear, tear, or mischief; or for the relief of a stricken community overtaken by calamity.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 2, Ch. 239, L. 1999.**

7-5-2305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: **En. Sec. 1, Ch. 153, L. 1971; R.C.M. 1947, 16-1803.1.**

7-5-2306. Use of installment purchase contracts. When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind exceeds $4,000, the county governing body may provide for the payment of the purchase price in installments extending over a period of not more than 10 years, provided that at the time of entering into the agreement for the purchase, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of the portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of the purchase price is to be paid contains an appropriation for the purpose of paying the purchase price.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(2); amd. Sec. 1, Ch. 233, L. 1991.**

7-5-2307. Treatment of rental-purchase contracts. Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this part shall apply thereto and govern and control the same.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(3).**

7-5-2308. Department of administration as purchasing agent. The department of administration may serve as a purchasing agent for the county governing body by mutual consent of both parties.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(5).**

7-5-2309. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is subject to competitive bid under this part, the state resident bid preference provided in 18-1-102(1)(a) applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county.

History: **En. Sec. 1, Ch. 252, L. 1999; amd. Sec. 3, Ch. 181, L. 2001.**

7-5-2310 through 7-7-2314 reserved.

7-5-2315. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: **En. Sec. 12, Ch. 162, L. 2005.**

Part 24
County Printing
(Renumbered)

7-5-2401. Renumbered 18-7-401. Sec. 2, Ch. 148, L. 2009.

7-5-2402. Renumbered 18-7-402. Sec. 2, Ch. 148, L. 2009.

7-5-2403. Renumbered 18-7-403. Sec. 2, Ch. 148, L. 2009.

7-5-2404. Renumbered 18-7-404. Sec. 2, Ch. 148, L. 2009.

7-5-2405. Renumbered 18-7-405. Sec. 2, Ch. 148, L. 2009.

7-5-2406 through 7-5-2410 reserved.

7-5-2411. Renumbered 18-7-411. Sec. 2, Ch. 148, L. 2009.

7-5-2412. Renumbered 18-7-412. Sec. 2, Ch. 148, L. 2009.

7-5-2413. Renumbered 18-7-413. Sec. 2, Ch. 148, L. 2009.

7-5-2414. Renumbered 18-7-414. Sec. 2, Ch. 148, L. 2009.

Part 25
Vacation of Plats

Part Cross-References

Entry townsite deeds, Title 70, ch. 28, part 3.

7-5-2501. Vacation of plats in abandoned townsites. (1) When there is filed in the office of the county clerk of any county of this state a plat of any village or townsite or a plat of any vineyard tracts, acreage tracts, suburban tracts, or community tracts and it is desired by the owners of the land to vacate the plat, the county commissioners of the county in which such plat is filed shall, upon petition of the owners of the land described in the plat and upon such conditions as may be reasonable, cancel the plat and shall vacate the lots, streets, alleys, parks, and boulevards, if any, described in the plat. Thereafter the designation of the property shall be by metes and bounds or by legal subdivisions if the circumstances require and the same shall be assessed accordingly. If any post office, store, or other business establishment is located within the platted area, that fact shall not prevent the cancellation and vacating of the plat in accordance with the terms of this section, but in all cases where it is necessary to designate the location of any such post office, store, or other business property by metes and bounds for purposes of identification, this designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this section shall be signed by all the owners of the land in the platted area, shall distinctly refer to the original plat for purposes of identification, and shall disclose that the petitioners are the owners of all the lands described in the plat and that no rights of any person have intervened since the filing of the plat which would be adversely affected by the cancellation and annulment thereof.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part); amd. Sec. 3, Ch. 311, L. 1979.

Cross-References

Montana Subdivision and Platting Act, Title 76, ch. 3.

7-5-2502. Vacation of portion of village or townsite. (1) When only a portion of any village or townsite in any unincorporated village or town is sought to be vacated or excluded from the village or townsite and the portion is not less than three blocks in area and is situated at the limits or boundaries of the village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where the village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded. The petition must be addressed to the district court of the county, setting forth the description of the portion sought to be excluded and the reason or reasons for desiring the portion to be excluded. A citation must be issued by the judge of the court before whom the matter is pending, citing all persons interested in the matter to appear before the court at a time and place specified in the citation, but at a time not less than 3 weeks from the date of the citation. The citation must be published as provided in 7-1-2121.

(2) Upon the hearing of the petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion of the village or townsite as requested in the petition, including any streets, alleys, parks, or boulevards upon which a public easement or easements may not vest. The excluded property must be described by metes and bounds in the decree of the court, and the property must be assessed accordingly.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part); amd. Sec. 12, Ch. 354, L. 2001.

7-5-2503. Action by city council required to validate vacation by county commissioners. The action of the county commissioners prior to February 3, 1943, vacating any streets, avenues, alleys, parks, or boulevards within the corporate limits of any incorporated city or town the vacating of which at the time of the action of the county commissioners required action by any city council, shall not be effective for the purpose of vacating any such streets, avenues, alleys, parks, or boulevards unless or until the same are vacated by such city council.

History: En. Sec. 1, Ch. 13, L. 1943; R.C.M. 1947, 11-2804(part).

7-5-2504. Vacation of public sites in unincorporated places. Whenever a petition signed by freeholders owning at least two-thirds of the property fronting on any street of any unincorporated townsite in this state shall be presented to the board of county commissioners of the county in which such townsite is situated praying said board to vacate any park, boulevard, or other public place bordering on said street and the adjoining property and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board duly entered upon its minutes, declare such park, boulevard, or public place vacated. Thereupon the land included therein shall attach to and become part of the adjoining lots of said townsite, and the title thereto shall pass with conveyance of said lots.

History: En. Sec. 1, Ch. 60, L. 1907; Sec. 3549, Rev. C. 1907; re-en. Sec. 5309, R.C.M. 1921; re-en. Sec. 5309, R.C.M. 1935; R.C.M. 1947, 11-2805.

Parts 26 through 40 reserved

Part 41
Conduct of Municipal Government

Part Cross-References

Business improvement districts, Title 7, ch. 12, part 11.

7-5-4101. General powers of municipal council. The city or town council has power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

History: En. Sec. 325, 5th Div. Comp. Stat. 1887; amd. Secs. 3, 4, and 5, p. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, p. 203, L. 1897; re-en. Sec. 3259, Rev. C. 1907; re-en. Subd. 1, Sec. 5039, R.C.M. 1921; Cal. Pol. C. Sec. 4408; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039, R.C.M. 1935; R.C.M. 1947, 11-901.

Cross-References

Nature of municipality, 7-1-4101.
Legislative powers of municipality, 7-1-4123.
Restriction on local government regulation of firearms, 45-8-351.

7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor may:

(a) communicate to the council, at the beginning of each session and more often if considered necessary, a statement of the affairs of the city or town, with recommendations that the mayor considers proper;

(b) recommend to the council measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances that the mayor considers expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;

(f) procure and have in the mayor's custody the seal of the city or town;

(g) take and administer oaths;

(h) perform other duties that may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and shall sign the journals of the council and all warrants on the city treasury and decide all ties by vote. The mayor has no other vote.

History: (1)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; (2)En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907; re-en. Sec. 5031, R.C.M. 1921; re-en. Sec. 5031, R.C.M. 1935; Sec. 11-803, R.C.M. 1947; R.C.M. 1947, 11-802(part), 11-803; amd. Sec. 4, Ch. 311, L. 1979; amd. Sec. 465, Ch. 61, L. 2007.

Cross-References

Distribution of municipal powers, 7-1-4122.

7-5-4103. Council rules and discipline. The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4104. Control of nuisances — exception. (1) The city or town council has power to:

(a) define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises that they occupy or control;

(b) regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement; and

(c) enforce the penalty for violations of 7-5-4113 and post copies of 7-5-4113 in conspicuous locations in the municipality.

(2) The city or town council may not prohibit the placing of a "notice of violation" card on a motor vehicle illegally parked in a disability parking space.

History: En. Subds. 33, 81, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.32, 5039.80, R.C.M. 1935; R.C.M. 1947, 11-935, 11-983; amd. Sec. 2, Ch. 406, L. 1993; amd. Sec. 3, Ch. 67, L. 1997.

Cross-References

Nuisances, Title 27, ch. 30.

7-5-4105. Repealed. Sec. 1, Ch. 26, L. 1987.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907; re-en. Sec. 5086, R.C.M. 1921; Cal. Pol. C. Sec. 4452; re-en. Sec. 5086, R.C.M. 1935; R.C.M. 1947, 11-1503.

7-5-4106. Power of condemnation. The city or town council may condemn private property for any public use listed in 70-30-102. The ordinance authorizing the taking of private property for a public use is conclusive as to the necessity of the taking and must conform to and be conducted as provided in Title 70, chapters 30 and 31, concerning eminent domain.

History: En. Subd. 75, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.74, R.C.M. 1935; R.C.M. 1947, 11-977; amd. Sec. 2, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

7-5-4107. Municipal census. The city or town council has power to take a census of the inhabitants of a city or town at any time.

History: En. Subd. 77, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.76, R.C.M. 1935; R.C.M. 1947, 11-979.

7-5-4108. Municipal printing contract. The city or town council has power to provide for the city or town printing. The contract for city or town printing must be let annually to the lowest bidder.

History: En. Subd. 78, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.77, R.C.M. 1935; R.C.M. 1947, 11-980.

7-5-4109. Control of conflict of interest. (1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or

employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;

(b) whether an opportunity was provided for open competitive bidding or negotiation;

(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and

(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

History: En. Sec. 345, 5th Div. Comp. Stat. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R.C.M. 1921; re-en. Sec. 5069, R.C.M. 1935; R.C.M. 1947, 11-1201; amd. Sec. 2, Ch. 322, L. 1993.

Cross-References

Governmental standards of conduct, Title 2, ch. 2.

Official misconduct, 45-7-401.

7-5-4110. Compensation and duties of city employees. The city or town council has power to fix the compensation and to prescribe the duties of all employees of the city or town, subject to the limitations mentioned in this code.

History: En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; R.C.M. 1947, 11-949(part).

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-5-4111. City work week. All full-time salaried city employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

Cross-References

Eight-hour workday, Art. XII, sec. 2, Mont. Const.

Police officers — 8-hour day, 7-32-4116.

Firefighters — hours of work — first- and second-class cities, 7-33-4128.

Workday for local government employees, 39-4-107.

7-5-4112. Reports from municipal officers. The city or town council may require from an officer at any time a report in detail of the transactions in that office or any matter connected with that office.

History: En. Subd. 60, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.59, R.C.M. 1935; R.C.M. 1947, 11-962; amd. Sec. 466, Ch. 61, L. 2007.

7-5-4113. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting. (1) A person may not throw away lighted matches, tobacco, cigarettes, cigars, or other lighted material on a forest road, private road, city street, county road, public highway, or railroad right-of-way, except lighted materials used as safety signaling devices, in this state.

(2) A person may not empty an ashtray containing matches, ashes, cigarette or cigar refuse, or other related material on a forest road, private road, city street, county road, public highway, or railroad right-of-way in this state.

(3) A person convicted of violating subsection (1) or (2) shall be fined a minimum of $100.

(4) Municipalities, the forest service, county governments, property owners, public transit operators, federal highway administrators, and any other appropriate entity may, at their discretion, post copies of this section in conspicuous locations.

History: En. Sec. 1, Ch. 67, L. 1997.

7-5-4114 through 7-5-4120 reserved.

7-5-4121. Conduct of council business. (1) A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

(2) The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution or the making of any contract. The voting on the election or appointment of any officer must be viva voce. A majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: (1)En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907; re-en. Sec. 5052, R.C.M. 1921, Cal. Pol. C. Sec. 4406; re-en. Sec. 5052, R.C.M. 1935; Sec. 11-1012, R.C.M 1947; (2)En. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122, 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907; re-en. Sec. 5054, R.C.M. 1921; re-en. Sec. 5054, R.C.M. 1935; Sec. 11-1014, R.C.M. 1947; R.C.M. 1947, 11-1012, 11-1014.

7-5-4122. Special meetings of council. When a special meeting of the council is called under 7-5-4102(1)(c), the mayor must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4123. Journal of council proceedings. The council must cause a journal of the proceedings to be kept, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4124. Destruction of municipal records. Upon the order of the city or town council or commission and with the written approval of the local government records destruction subcommittee provided for in 2-6-403, a city or town officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.

History: (1), (2)En. Sec. 3, Ch. 92, L. 1935; re-en. Sec. 455.3, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1974; amd. Sec. 80, Ch. 348, L. 1974; amd. Sec. 37, Ch. 213, L. 1975; Sec. 59-515, R.C.M. 1947; (3)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-515, 59-516(part); amd. Sec. 1, Ch. 217, L. 1981; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 430, L. 1985; amd. Sec. 14, Ch. 420, L. 1993.

7-5-4125. Convenience fee for electronic municipal government services. (1) The municipality may charge a convenience fee and may allow municipal departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services.

History: En. Sec. 2, Ch. 264, L. 2003.

7-5-4126 through 7-5-4140 reserved.

7-5-4141. Membership in organizations of municipal officers. (1) The governing body of a city or town may pay:

(a) the membership fees and dues in any organization of city and town officials when the purpose of the organization is improvement of laws relating to city and town government and their better and more economical administration; and

(b) the necessary expenses of any regular officer or employee of the city or town in attending any convention or meeting of such organization upon the direction of the governing body by order upon its minutes, stating that the public interest requires such attendance.

(2) The payment of membership fees, dues, and/or expenses is to be made from such fund of the city or town as the governing body shall direct in the order, with the claim presented, audited, and allowed as are other claims against the city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(3); amd. Sec. 5, Ch. 311, L. 1979.

7-5-4142. Attendance at meetings and conventions by municipal officers and employees. Unless otherwise provided by law, a city officer or employee may not receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at a convention, meeting, or other gathering of public officers except for attendance upon a convention, meeting, or other gathering that the officer or employee may by virtue of the office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 6, Ch. 311, L. 1979; amd. Sec. 467, Ch. 61, L. 2007.

Part 42
Municipal Ordinances and Resolutions

Part Cross-References

Restriction on local government regulation of firearms, 45-8-351.

7-5-4201. Municipal ordinances. (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in the mayor's stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) An ordinance may not be passed containing more than one subject, which must be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: (1)En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R.C.M. 1921; re-en. Sec. 5055, R.C.M. 1935; Sec. 11-1101, R.C.M. 1947; (2), (3)En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1101, 11-1102(part); amd. Sec. 468, Ch. 61, L. 2007.

7-5-4202. Incorporation of technical codes by reference. (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) The notice of intent to adopt a technical code in whole or in part by reference must be published as provided in 7-1-4127. A copy of the code or part to be adopted must be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(2), (3); amd. Sec. 1, Ch. 113, L. 1987; amd. Sec. 13, Ch. 354, L. 2001.

7-5-4203. Effective date of ordinances and resolutions. (1) An ordinance passed by the council of any city or town may not become effective until 30 days after its passage except:

(a) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

(b) emergency measures.

(2) A resolution is immediately effective unless a delayed effective date is specified in the resolution.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part); amd. Sec. 7, Ch. 311, L. 1979; amd. Sec. 2, Ch. 309, L. 1993.

7-5-4204. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

(1) a franchise or license to a corporation or individual;

(2) any provisions for the sale of real estate;

(3) any lease or letting of any property for a period exceeding 1 year; or

(4) the purchase or sale of personal property exceeding $5,000 in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part).

7-5-4205. Powers of mayor related to ordinances and resolutions. The mayor has power to:

(1) cause the ordinances of the city or town to be executed;

(2) approve all ordinances and resolutions of the council adopted by it;

(3) veto any objectionable part of a resolution or ordinance and approve the other parts.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4206. Procedure to veto ordinance or resolution. (1) In case an ordinance or resolution does not meet the mayor's approbation, the mayor has power to return the same to the next regular meeting of the council, with all objections in writing. No ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

(2) If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4207. Penalties for violation of municipal ordinances. (1) Except as provided in subsection (2), the city or town council may impose fines and penalties for the violation of any city ordinance, but a fine or penalty may not exceed $500 and imprisonment may not exceed 6 months for any one offense.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both.

History: En. Subd. 48, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.47, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1974; R.C.M. 1947, 11-950; amd. Sec. 2, Ch. 597, L. 1993.

7-5-4208. Applicability of part. (1) Except as provided in subsection (2), the provisions of this part govern the adoption procedures and effect of municipal ordinances and resolutions.

(2) The following provisions apply to adoption procedures and effect of municipal ordinances and resolutions, notwithstanding the provisions of this part:

(a) Provisions of law not within Title 7, chapter 5, parts 1 and 42, that set forth different procedures for the adoption of an ordinance or resolution relating to specific situations govern the adoption rather than the general provisions of this part or part 1 of this chapter.

(b) Sections of Title 7, chapter 5, part 1, that are in conflict with the provisions of this part may be adopted by a municipality by ordinance to govern the adoption of ordinances and resolutions and the effects of such ordinances and resolutions as a substitute for the applicable sections of this part.

(c) Sections of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part apply to municipal ordinances and resolutions.

History: En. Sec. 1, Ch. 315, L. 1981; amd. Sec. 7, Ch. 220, L. 1985.

7-5-4209 and 7-5-4210 reserved.

7-5-4211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104(part).

7-5-4212. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104(part).

7-5-4213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104(2), (3).

7-5-4214. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104(part).

7-5-4215. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104(5).

7-5-4216. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104(6).

7-5-4217. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Ch. 167, L. 1907; Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R.C.M. 1921; re-en. Sec. 5061, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1967; Sec. 11-1107, R.C.M. 1947; (2)En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R.C.M. 1921; re-en. Sec. 5068, R.C.M. 1935; Sec. 11-1114, R.C.M. 1947; R.C.M. 1947, 11-1107, 11-1114.

7-5-4218. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R.C.M. 1921; re-en. Sec. 5067, R.C.M. 1935; R.C.M. 1947, 11-1113.

7-5-4219. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4220. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Secs. 3267, 3270, 3271, Rev. C. 1907; re-en. Secs. 5059, 5062, 5063, R.C.M. 1921; re-en. Secs. 5059, 5062, 5063, R.C.M. 1935; R.C.M. 1947, 11-1105, 11-1108, 11-1109.

7-5-4221. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R.C.M. 1921; re-en. Sec. 5064, R.C.M. 1935; R.C.M. 1947, 11-1110.

7-5-4222. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

7-5-4223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

Part 43
Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts. (1) A city or town is authorized to make any contracts necessary to carry into effect the applicable powers granted by this chapter and to provide for the manner of executing the contracts.

(2) (a) All necessary contracts for professional, technical, engineering, or legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. However, contracts in which the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, or legal services must be awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(b) (i) Except as provided in subsection (2)(b)(ii), supervision over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of subsection (2)(a).

(ii) A city, town, or municipality may extend, renew, or amend a contract or series of contracts for the supervision or operation of a physical plant that provides water, sewer, or power services without proceeding under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307 if:

(A) one or more of the contracts were awarded to the entity in accordance with the competitive bidding procedures provided in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307; and

(B) the entity has provided the services to the city, town, or municipality for the immediately preceding 5-year period.

History: **(1)En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.62, R.C.M. 1935; Sec. 11-965, R.C.M. 1947; (2)En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; Sec. 11-1202, R.C.M. 1947; R.C.M. 1947, 11-965, 11-1202(part); amd. Sec. 1, Ch. 542, L. 1983; amd. Sec. 1, Ch. 182, L. 1987; amd. Sec. 1, Ch. 526, L. 2003.**

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303, 7-5-4310, or Title 18, chapter 2, part 5, a contract for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of $50,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may:

(a) postpone awarding a contract until the next regular meeting after bids are received in response to the advertisement;

(b) reject any or all bids; and

(c) readvertise as provided in this section.

History: **En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 1, Ch. 429, L. 1981; amd. Sec. 1, Ch. 169, L. 1987; amd. Sec. 1, Ch. 475, L. 1993; amd. Sec. 2, Ch. 459, L. 1997; amd. Sec. 14, Ch. 354, L. 2001; amd. Sec. 1, Ch. 192, L. 2005; amd. Sec. 5, Ch. 574, L. 2005.**

7-5-4303. Exemptions from bidding or advertising requirements for certain contracts. (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: **En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).**

Cross-References

Products of prison industries training program, 53-30-131 through 53-30-133.

7-5-4304. Certain contracts to be submitted to voters. A contract may not be let pursuant to 7-5-4302 that extends over a period of 5 years or more, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, or obligations issued pursuant to 7-7-4104, without first submitting the question to a vote of the electors of the city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 8, Ch. 311, L. 1979; amd. Sec. 8, Ch. 220, L. 1985; amd. Sec. 2, Ch. 770, L. 1991; amd. Sec. 1, Ch. 139, L. 1999.

7-5-4305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971; R.C.M. 1947, 11-1202.1.

7-5-4306. Use of installment purchase contract. When the amount to be paid under an installment purchase contract exceeds $4,000, the council may provide for the payment of the amount in installments extending over a period of not more than 10 years if at the time of entering into the contract, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to pay for the portion of the contract price payable during the then-current fiscal year. The budget for each following year in which any portion of the purchase price is to be paid must contain an appropriation for the purpose of paying that portion. The limitations contained in this section do not apply to installment purchase contracts entered into pursuant to 7-7-4104.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 2, Ch. 429, L. 1981; amd. Sec. 2, Ch. 475, L. 1993; amd. Sec. 3, Ch. 459, L. 1997; amd. Sec. 2, Ch. 139, L. 1999.

7-5-4307. Sale or trade-in of old supplies or equipment. Old supplies or equipment may be sold by the city or town to the highest responsible bidder after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

7-5-4308. Procedure to modify contract. (1) When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, the alteration or modification may be made only by resolution of the council. The resolution is not in effect until the price to be paid for the work is agreed to in writing and signed by the contractor and approved by the council.

(2) A contractor may not be allowed anything for extra work caused by an alteration or modification unless a resolution is made and an agreement is signed as provided in subsection (1). A contractor may not be allowed more for the alteration than the price fixed by the agreement.

History: En. Secs. 4809, 4810, Pol. C. 1895; re-en. Secs. 3280, 3281, Rev. C. 1907; re-en. Secs. 5072, 5073, R.C.M. 1921; re-en. Secs. 5072, 5073, R.C.M. 1935; R.C.M. 1947, 11-1204, 11-1205; amd. Sec. 469, Ch. 61, L. 2007.

7-5-4309. Repealed. Sec. 1, Ch. 81, L. 1983.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907; re-en. Sec. 5071, R.C.M. 1921; re-en. Sec. 5071, R.C.M. 1935; R.C.M. 1947, 11-1203.

7-5-4310. Use of public auction to make purchase. In lieu of soliciting bids, the council may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum of $50,000 or less.

History: En. Sec. 2, Ch. 169, L. 1987; amd. Sec. 2, Ch. 192, L. 2005.

7-5-4311 through 7-5-4314 reserved.

7-5-4315. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: En. Sec. 12, Ch. 162, L. 2005.

7-5-4316 through 7-5-4320 reserved.

7-5-4321. Grant of exclusive franchise — election required. (1) The council may not grant an exclusive franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident to the law.

(2) An exclusive franchise for any purpose, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, may not be granted by any city or town or by the mayor or city council to any person, association, or corporation without first submitting the application for an exclusive franchise to the electors of the city at a regular or primary election.

History: (1)En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921; re-en. Sec. 5074, R.C.M. 1921; re-en. Sec. 5074, R.C.M. 1935; Sec. 11-1206, R.C.M. 1947; (2)En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907; re-en. Sec. 5075, R.C.M. 1921; re-en. Sec. 5075, R.C.M. 1935; Sec. 11-1207, R.C.M. 1947; R.C.M. 1947, 11-1206, 11-1207; amd. Sec. 9, Ch. 311, L. 1979; amd. Sec. 1, Ch. 283, L. 1981; amd. Sec. 3, Ch. 770, L. 1991; amd. Sec. 26, Ch. 387, L. 1995.

7-5-4322. Election on question of granting franchise. (1) Notice of the election must be published as provided in 13-1-108. The notice must state the time and place of holding the election, the character of any franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At the election, the ballots must contain the words "For granting franchise" and "Against granting franchise", and in voting, the elector shall make a cross (X) opposite the answer that the elector intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election are "For granting franchise", the mayor and city council shall grant the franchise by the passage and approval of a proper ordinance.

History: (1), (2)En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907; re-en. Sec. 5076, R.C.M. 1921; re-en. Sec. 5076, R.C.M. 1935; Sec. 11-1208, R.C.M. 1947; (3)En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907; re-en. Sec. 5077, R.C.M. 1921; re-en. Sec. 5077, R.C.M. 1935; Sec. 11-1209, R.C.M. 1947; R.C.M. 1947, 11-1208, 11-1209; amd. Sec. 304, Ch. 571, L. 1979; amd. Sec. 470, Ch. 61, L. 2007.

Part 44
Municipal Elections

7-5-4401. Division of municipalities into wards. (1) The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

(2) (a) Cities of the first class must be divided into not less than four or more than 10 wards.

(b) Cities of the second class must be divided into not less than three or more than six wards.

(c) Cities of the third class must be divided into not less than two or more than four wards.

(d) Towns must be divided into not less than two or more than three wards; provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires.

(3) All changes in the number and boundaries of wards must be made by ordinance. No new ward must be created unless there shall be within its boundaries 150 or more electors.

History: (1)En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907; re-en. Sec. 5001, R.C.M. 1921; re-en. Sec. 5001, R.C.M. 1935; Sec. 11-707, R.C.M. 1947; (2), (3)En. Sec. 4747, Pol C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909; re-en. Sec. 5002, R.C.M. 1921; re-en. Sec. 5002, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1943; Sec. 11-708, R.C.M. 1947; R.C.M. 1947, 11-707, 11-708.

Cross-References

Classification of cities, 7-1-4111.

7-5-4402. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 4003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

7-5-4403. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R.C.M. 1921; re-en. Sec. 5009, R.C.M. 1935; amd. Sec. 4, Ch. 76, L. 1961; R.C.M. 1947, 11-715.

7-5-4404. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4405. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4406. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4407. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907; re-en. Sec. 5012, R.C.M. 1921; re-en. Sec. 5012, R.C.M. 1935; R.C.M. 1947, 11-718.

7-5-4408. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 57, Ch. 368, L. 1969; amd. Sec. 2, Ch. 343, L. 1971; R.C.M. 1947, 23-3302.

7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

CHAPTER 6
FINANCIAL ADMINISTRATION AND TAXATION

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7-6-101. Definitions.
7-6-102. Authorization to request in-lieu payments for taxes from United States.
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7-6-2427. Repealed.
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7-6-2429. Examination and allowance of officers' accounts.
7-6-2430. Accounts to be examined, settled, and allowed.

Part 25 — County Taxation

7-6-2501. Authorization for county mill levy.
7-6-2502. Repealed.
7-6-2503. Duties of county treasurer related to taxation.
7-6-2504. Duties of county clerk related to taxation.
7-6-2505 through 7-6-2510 reserved.
7-6-2511. County levy for certain court expenses.
7-6-2512. County tax levy for health care facilities.
7-6-2513. County public safety levy — purpose.
7-6-2514. Repealed.
7-6-2515 through 7-6-2520 reserved.
7-6-2521. All-purpose levy authorized for counties.
7-6-2522. All-purpose levy.
7-6-2523. Repealed.
7-6-2524. Changes from all-purpose levy.
7-6-2525. Repealed.
7-6-2526. Repealed.
7-6-2527. Taxation — public and governmental purposes.
7-6-2528 through 7-6-2530 reserved.
7-6-2531. Repealed.
7-6-2532. Repealed.
7-6-2533. Repealed.
7-6-2534. Repealed.
7-6-2535. Repealed.
7-6-2536. Repealed.
7-6-2537. Repealed.
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Part 26 — County Warrants

7-6-2601. Details related to county warrants — payments to state — definition.
7-6-2602. Payment of warrants.
7-6-2603. Registration of warrants.
7-6-2604. Interest on unpaid warrants.
7-6-2605. Call for payment of warrants drawing interest.
7-6-2606. Order of redemption of warrants.
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Part 27 — Investment of County Money

7-6-2701. Investment of certain money in county, municipal, hospital, and school warrants.
7-6-2702. Repealed.

Part 28 — Management of School Money

7-6-2801. Management of school funds.
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Part 40 — Local Government Budget Act

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7-6-4002. Definitions.
7-6-4003. Budget and levies supplied to department of administration.
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7-6-4005. Expenditures limited to appropriations.
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7-6-4007 through 7-6-4010 reserved.
7-6-4011. Use of bond proceeds and borrowed money.
7-6-4012. Fee based budgets — adjustable appropriation.

7-6-4013. Fees for services — hearing and resolution.
7-6-4014. Restriction on tax-financed expenditures if voter approval required.
7-6-4015. Payments for judgments.
7-6-4016 through 7-6-4019 reserved.
7-6-4020. Preliminary annual operating budget.
7-6-4021. Notice of preliminary or amended budget.
7-6-4022. District court budgets.
7-6-4023. Repealed.
7-6-4024. Hearing on preliminary budget.
7-6-4025. Receipt and expenditure of money prior to adoption of final budget.
7-6-4026 through 7-6-4029 reserved.
7-6-4030. Final budget — resolution — appropriations.
7-6-4031. Budget amendment procedures.
7-6-4032. Emergency expenditures.
7-6-4033. Expenditure limitation.
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7-6-4035. Tax levies for boards and commissions — bond exemption.
7-6-4036. Fixing tax levy.

Part 41 — General Provisions Related to Municipalities (Repealed)

Part 42 — Municipal Budget Law (Repealed)

Part 43 — Claims Against Municipalities

7-6-4301. Presentation of claims against municipality.
7-6-4302. Payment of claims by warrant or check.
7-6-4303. Cancellation of municipal warrants and checks.
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7-6-4305 through 7-6-4310 reserved.
7-6-4311. Liability for false claims.

Part 44 — Municipal Taxation

7-6-4401. General taxing power of municipalities.
7-6-4402. Tax-related duties of city treasurer.
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7-6-4404. Tax-related duties of town clerk.
7-6-4405. Repealed.
7-6-4406. Authority to levy special taxes and assessments.
7-6-4407. Repealed.
7-6-4408. Repealed.
7-6-4409. Determination of assessments.
7-6-4410. Property tax record to be furnished to certain municipalities.
7-6-4411. Equalization of assessments.
7-6-4412. Preparation of municipal property tax record.
7-6-4413. Collection of taxes.
7-6-4414. Sales for delinquent taxes when county collects municipal tax.
7-6-4415 through 7-6-4420 reserved.
7-6-4421. Authorization for tax levy and collection by municipality.
7-6-4422. Authorization for collection of delinquent taxes by municipalities.
7-6-4423. Sales for delinquent taxes when municipality collects municipal tax.
7-6-4424 through 7-6-4430 reserved.
7-6-4431. Authorization to exceed or impose less than maximum mill levy — election required to exceed.
7-6-4432. Repealed.
7-6-4433. Repealed.
7-6-4434. Repealed.
7-6-4435. Repealed.
7-6-4436. Repealed.
7-6-4437. Repealed.
7-6-4438. Tax levy and expenditures for municipal and administrative purposes when limits on municipal indebtedness exceeded.
7-6-4439. Repealed.
7-6-4440 through 7-6-4450 reserved.
7-6-4451. All-purpose mill levy authorized.
7-6-4452. Repealed.
7-6-4453. Certain special mill levies also available.
7-6-4454. Certification of all-purpose levy to county officers.
7-6-4455. Changes from all-purpose mill levy method.
7-6-4456 through 7-6-4460 reserved.

7-6-4461. Renumbered 7-6-1501.
7-6-4462. Renumbered 7-6-1502.
7-6-4463. Renumbered 7-6-1503.
7-6-4464. Renumbered 7-6-1504.
7-6-4465. Renumbered 7-6-1505.
7-6-4466. Renumbered 7-6-1506.
7-6-4467. Renumbered 7-6-1507.
7-6-4468. Renumbered 7-6-1508.
7-6-4469. Renumbered 7-6-1509.

Part 45 — Municipal Warrants

7-6-4501. Interest on unpaid warrants — payments to state — definition.
7-6-4502. Call for payment of warrants drawing interest.
7-6-4503. Registration of warrants.
7-6-4504. Order of redemption of warrants.

Part 46 — Deposit and Investment of Municipal Money

7-6-4601. Deposit of public money.
7-6-4602. Interest rate on deposited public money.
7-6-4603. Investment of municipal money in city or town warrants.

Part 1
In-Lieu Payments for Taxes

Part Cross-References

Property subject to taxation, Title 15, ch. 6.
Federal sums in lieu of taxes, Title 17, ch. 3, part 3.
State land equalization amounts, Title 77, ch. 1, part 5.

7-6-101. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Fund" shall mean, unless otherwise expressed, the government project fund to be established pursuant to 7-6-105.

(4) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate or otherwise are vested.

(5) "Political subdivision" shall mean any agency or unit of this state which now is or hereafter shall be authorized to levy taxes or empowered to cause taxes to be levied.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States or any other lands formerly upon the tax rolls and purchased by the United States and used for resettlement, rehabilitation, or grazing purposes, located within this state or any political subdivision thereof, and shall include the persons inhabiting, occupying, or using any lands so owned or acquired by the United States.

(7) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(8) "United States" shall mean the United States of America.

History: En. Sec. 1, Ch. 59, L. 1939; amd. Sec. 1, Ch. 139, L. 1941; R.C.M. 1947, 84-5506.

7-6-102. Authorization to request in-lieu payments for taxes from United States. (1) The board of county commissioners of any county in this state is hereby authorized and empowered:

(a) to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay; and

(b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes.

(2) Each agreement entered into pursuant to subsection (1) shall contain the names of the political subdivisions with respect to which it is consummated and a statement of the

proportionate share of the payment by the United States to which each such subdivision shall be entitled.

History: (1)En. Sec. 2, Ch. 59, L. 1939; Sec. 84-5507, R.C.M. 1947 (2)En. Sec. 4, Ch. 59, L. 1939; Sec. 84-5509, R.C.M. 1947; R.C.M. 1947, 84-5507, 84-5509.

7-6-103. Computation of payment in lieu of taxes. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable.

History: En. Sec. 3, Ch. 59, L. 1939; R.C.M. 1947, 84-5508.

Cross-References

Taxation of property, Title 15, ch. 6 through 24.

7-6-104. Procedure to file agreement and collect in-lieu payments. (1) The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer.

(2) Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated and state the share of the payment due thereunder to which the subdivision is entitled.

(3) On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes.

History: En. Sec. 5, Ch. 59, L. 1939; R.C.M. 1947, 84-5510.

7-6-105. Establishment and use of government project fund. (1) The county treasurer shall establish a fund in the county treasury to be known as the government project fund.

(2) The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever such payment is received, the county treasurer shall apportion it to the several accounts in the fund, pursuant to the agreement under which the payment is made.

History: En. Sec. 6, Ch. 59, L. 1939; R.C.M. 1947, 84-5511.

7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments. (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which must be filed with the board of county commissioners and the other of which must be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county treasury to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign the warrants, which must also be signed by the presiding officer of the board.

(3) (a) Except as provided in subsection (3)(b), whenever a warrant is presented to the county treasurer, the treasurer shall debit the proper account in the fund and shall pay the amount of the warrant in full, without deduction, to the political subdivision presenting the warrant.

(b) The county treasurer may not honor the warrant unless it is endorsed by the president or other presiding officer of the governing body of the political subdivision. The endorsement of any warrant by the presiding officer of the governing body of a political subdivision as provided in this section constitutes an approval of the agreement under which the payment was received. If a governing body of a political subdivision refuses to receive any warrant delivered pursuant to this section, the amount of the warrant must be refunded to the United States by the county.

History: En. Sec. 7, Ch. 59, L. 1939; R.C.M. 1947, 84-5512; amd. Sec. 1, Ch. 252, L. 1979; amd. Sec. 471, Ch. 61, L. 2007.

Cross-References

County resolutions, 7-5-121; Title 7, ch. 5, part 22.

7-6-107. Procedure for subdivisions other than county to deal directly with United States. (1) If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby:

(a) authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay; and

(b) empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes.

(2) The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment.

History: En. Sec. 8, Ch. 59, L. 1939; R.C.M. 1947, 84-5513.

7-6-108. Disposition of in-lieu payments by subdivisions. All money received by a political subdivision pursuant to 7-6-106 or under 7-6-107 shall be deposited in such fund or funds or items of a fund or funds as may be designated in the agreement. If the agreement does not make such designation, the money received shall be deposited in such fund or funds or items of a fund or funds as the governing body of such subdivision shall by appropriate resolution direct.

History: En. Sec. 9, Ch. 59, L. 1939; R.C.M. 1947, 84-5514.

7-6-109. Requirement to provide services in absence of agreement. No provision of this part shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this part, of the duty of furnishing for the benefit of a project all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes.

History: En. Sec. 10, Ch. 59, L. 1939; R.C.M. 1947, 84-5515.

Part 2
Deposit and Investment of Public Money

Part Cross-References

Investment of county money, Title 7, ch. 6, part 27.
Deposit and investment of municipal money, Title 7, ch. 6, part 46.
Unified investment program, Title 17, ch. 6, part 2.
Investment of local government funds, 17-6-204.
Montana Facility Finance Authority bonds — legal investment, 90-7-113.

7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it is the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control only in solvent banks, building and loan associations, savings and loan associations, or credit unions, subject to national supervision or state examination as the local governing body may designate.

(2) The local governing body may deposit public money not necessary for immediate use by the county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized in subsection (1) or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from the bank, building and loan association, savings and loan association, or credit union security that the local governing body may prescribe, approve, and consider fully sufficient and necessary to ensure the safety and prompt payment of all deposits, together with the interest on any time or savings deposits.

(4) All deposits must be subject to withdrawal by the treasurer or town clerk in amounts that may be necessary from time to time. A deposit of funds may not be made or permitted to

remain in any bank, building and loan association, savings and loan association, or credit union until the security for the deposit has been first approved by the local governing body and delivered to the treasurer or town clerk.

History: **En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 329, L. 1981; amd. Sec. 1, Ch. 421, L. 1985; amd. Sec. 1, Ch. 90, L. 1989; amd. Sec. 14, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 in (1) near middle after "control" inserted "only" and after "credit unions" deleted "located in the county, city, or town of which such treasurer is an officer"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Deposit security, 7-6-207, 17-6-103.

Investment of local government funds, 17-6-204.

Functions of State Banking Board, Title 32, ch. 1, part 2.

7-6-202. Investment of public money in direct obligations of United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

(i) federal home loan bank;

(ii) federal national mortgage association;

(iii) federal home mortgage corporation; and

(iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) Except as provided in subsection (5), an investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not

have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.

(6) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 1, Ch. 620, L. 1985; amd. Sec. 1, Ch. 201, L. 1989; amd. Sec. 1, Ch. 271, L. 1993; amd. Sec. 1, Ch. 406, L. 1995; amd. Sec. 1, Ch. 131, L. 1997.

7-6-203. Interest rates on deposits of public money. (1) The bank, building and loan association, savings and loan association, or credit union in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, savings and loan association, or credit union to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds as set forth in this part.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 421, L. 1985.

7-6-204. Crediting of interest — exceptions. (1) Interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

(a) by law;

(b) by terms of a gift, grant, or donation; or

(c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, or of a fire service area or county fire department must be credited to the account of that fire district, service area, or department.

(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the separately created fund proportionately to each fund's participation in the deposit or investment.

History: (1)En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); (2)En. Sec. 1, Ch. 486, L. 1979; amd. Sec. 28, Ch. 575, L. 1981; amd. Sec. 1, Ch. 130, L. 1993; amd. Sec. 44, Ch. 278, L. 2001; amd. Sec. 1, Ch. 214, L. 2003; amd. Sec. 4, Ch. 449, L. 2007.

Cross-References

Investment of local government funds, 17-6-204.

7-6-205. Demand deposits. Demand deposits may be placed only in banks.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(a); amd. Sec. 1, Ch. 229, L. 1997.

Cross-References

Demand deposit, 30-3-104, 32-1-109.

Bank capital and surplus, 32-1-109.

7-6-206. Time deposits — repurchase agreement. (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

(3) In addition to other investments authorized under 7-6-202 and this section, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:

(a) the money is initially invested through a federally insured financial institution in the state selected by the governing body;

(b) the selected in-state financial institution arranges for the deposit of the funds in certificates of deposit for the account of the county, city, or town in one or more federally insured financial institutions, regardless of location;

(c) the full amount of principal and accrued interest on each certificate of deposit is covered by federal deposit insurance;

(d) the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the certificates of deposit issued for its account; and

(e) at the same time that the county, city, or town money is deposited and the certificates of deposit are issued, the selected in-state financial institution receives an amount of deposits from customers of other federally insured financial institutions, regardless of location, equal to or greater than the amount of money initially invested by the county, city, or town through the selected in-state financial institution.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(b), (4)(c); amd. Sec. 8, Ch. 634, L. 1979; amd. Sec. 3, Ch. 329, L. 1981; amd. Sec. 3, Ch. 421, L. 1985; amd. Sec. 2, Ch. 90, L. 1989; amd. Sec. 2, Ch. 271, L. 1993; amd. Sec. 2, Ch. 406, L. 1995; amd. Sec. 1, Ch. 240, L. 2005.

Cross-References

Certificate of deposit, 30-3-104.

7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits that is not guaranteed or insured according to law and, as to the unguaranteed or uninsured portion, to the extent of:

(a) 50% of the deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security must consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, the securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when the receipt is in favor of the treasurer or town clerk and the treasurer's or clerk's successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. The appropriate governing body shall, upon the acceptance and approval of any of the bonds or securities, make a complete minute entry of the acceptance and approval upon the record of its proceedings, and the bonds and securities must be reapproved at least quarterly.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(2), (3); amd. Sec. 1, Ch. 158, L. 1979; amd. Sec. 2, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 217, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 620, L. 1985; amd. Sec. 472, Ch. 61, L. 2007.

Cross-References

Authority for depositing security for public funds, 32-1-447.

7-6-208. Substitution of deposit security. (1) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, savings and loan association, or credit union. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, savings and loan association, or credit union.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(7); amd. Sec. 4, Ch. 421, L. 1985.

7-6-209. Repealed. Sec. 2, Ch. 217, L. 1983.

History: En. Sec. 1, Ch. 44, L. 1931; re-en. Sec. 4767.3, R.C.M. 1935; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975; R.C.M. 1947, 16-2621; amd. Sec. 7, Ch. 274, L. 1981.

7-6-210. Repealed. Sec. 13, Ch. 179, L. 1995.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-211. Report by financial institution. Any bank, building and loan association, savings and loan association, or credit union receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

(1) all such money that has been deposited with such bank, building and loan association, savings and loan association, or credit union during the quarter;

(2) the amount of daily balance in dollars;

(3) the amount of interest credited or paid therefor by such bank, building and loan association, savings and loan association, or credit union; and

(4) that neither such bank, building and loan association, savings and loan association, or credit union nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, savings and loan association, or credit union.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963;

amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 5, Ch. 421, L. 1985.

7-6-212. Limitation on liability of treasurer or town clerk. When money has been deposited in accordance with the provisions of this part, the treasurer or town clerk is not liable for loss on account of any deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than the treasurer's or clerk's own neglect, fraud, or dishonorable conduct.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 473, Ch. 61, L. 2007.

7-6-213. Repurchase agreements — bidding. (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish one or more repurchase agreements, including daily repurchase agreements.

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

(4) The local governing body may maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in the state of Montana which are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration and range of funds to be invested.

History: En. Sec. 1, Ch. 329, L. 1981; amd. Sec. 3, Ch. 620, L. 1985.

Part 3
Local Government Block Grant Program
(Repealed)

7-6-301. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 1, Ch. 708, L. 1983.

7-6-302. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 2, Ch. 708, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 30, Sp. L. June 1986.

7-6-303. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 3, Ch. 708, L. 1983; amd. Sec. 2, Ch. 30, Sp. L. June 1986.

7-6-304. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 4, Ch. 708, L. 1983; amd. Sec. 3, Ch. 30, Sp. L. June 1986.

7-6-305. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 5, Ch. 708, L. 1983; amd. Sec. 4, Ch. 30, Sp. L. June 1986.

7-6-306. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 6, Ch. 708, L. 1983; amd. Sec. 5, Ch. 30, Sp. L. June 1986.

7-6-307. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 7, Ch. 708, L. 1983.

7-6-308. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 8, Ch. 708, L. 1983.

7-6-309. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 9, Ch. 708, L. 1983; amd. Sec. 6, Ch. 30, Sp. L. June 1986.

Part 4
Counties and Municipalities Interest on Overdue Accounts

7-6-401. Definitions relating to interest assessment. As used in 7-6-402 and 7-6-403, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a county or a municipality.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a county or municipality, including leases of equipment. The term also includes leases of buildings or other real property by a county or municipality.

History: En. Sec. 1, Ch. 413, L. 1985.

7-6-402. Interest assessed on amounts due. (1) Except as provided in 7-6-403, a county or municipality shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the county or municipality fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 35 days after receipt of a properly completed invoice, addressed to the payer county or municipality, or receipt of the supplies or services by the county or municipality, whichever is later.

History: En. Sec. 2, Ch. 413, L. 1985.

7-6-403. Exemptions. Section 7-6-402 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute;

(3) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the county or municipality;

(4) contracts entered into before October 1, 1985; or

(5) wages due and payable to county or municipal employees or payments from any retirement system created pursuant to Title 19.

History: En. Sec. 3, Ch. 413, L. 1985.

Part 5
Local Government Levy for Juvenile Detention Programs

7-6-501. Definitions. As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-1503, 41-5-1512, or 41-5-1513;

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities; and

(c) an educational program for youth in need of that service.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of intervention as those terms are defined in 41-5-103.

History: En. Sec. 1, Ch. 745, L. 1991; amd. Sec. 1, Ch. 286, L. 1997; amd. Sec. 1, Ch. 550, L. 1997; amd. Sec. 2, Ch. 536, L. 1999.

7-6-502. Levy for juvenile detention programs. (1) Subject to 15-10-420, a local government may impose a levy on the taxable value of all property within its jurisdiction in an amount determined by the governing body for the purpose of financing the establishment and operation of juvenile detention programs.

(2) Local governments may use the funds derived from a levy authorized in subsection (1) to contract with other units of local government to purchase services from available juvenile detention programs consistent with the purposes of the levy as stated in subsection (1).

History: En. Sec. 2, Ch. 745, L. 1991; amd. Sec. 16, Ch. 574, L. 2001.

Part 6
Local Government Accounting

7-6-601. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 430, L. 1995.

7-6-602. Definition. For the purposes of this part, "local government entity" means a consolidated city-county or a county or an incorporated city or town.

History: En. Sec. 2, Ch. 430, L. 1995.

7-6-603. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 3, Ch. 430, L. 1995.

7-6-604. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 430, L. 1995; amd. Sec. 1, Ch. 176, L. 1997.

7-6-605 through 7-6-608 reserved.

7-6-609. Declaration of policy. (1) It is the policy of the state of Montana that all governmental accounting systems be established and maintained in accordance with generally accepted accounting principles that are nationally recognized as set forth by the governmental accounting standards board or its generally recognized successor.

(2) The codifications, pronouncements, and interpretations of the governmental accounting standards board or its generally recognized successor must be recognized as the primary authoritative reference for governmental accounting.

History: En. Sec. 1, Ch. 278, L. 2001.

7-6-610. Fiscal year for local governments. The fiscal year of local governments commences on July 1 of each calendar year and ends on June 30 of the following calendar year.

History: En. Sec. 2, Ch. 278, L. 2001.

7-6-611. Role of department of administration. (1) The department of administration shall prescribe for all local governments:

(a) general methods and details of accounting in accordance with generally accepted accounting principles as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall notify the department of administration in writing, on a form prescribed by the department of administration, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of administration of the address and of any subsequent changes of the district's address.

History: En. Sec. 3, Ch. 278, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001; amd. Sec. 12, Ch. 114, L. 2003.

7-6-612. Additional records and reports. (1) The chief executive or governing body of a county or municipality may require any elected or appointed local government official or employee to:

(a) maintain new or additional financial records;

(b) perform new or additional financial reconciliations; and

(c) submit new or additional financial reports.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials. Continuing county duties include but are not limited to the following:

(a) The county treasurer shall make a detailed monthly report to the governing body of the county of all receipts, disbursements, debt, and other proceedings of the treasurer's office.

(b) The county clerk shall compile and present to the governing body of the county the annual financial report provided for in 7-6-611(2)(a).

(3) The designated county or municipal treasurer shall:

(a) receive, disburse, and serve as the custodian of all public money;

(b) provide for accountability of all local government cash receipts and for deposits and investments of all departments, offices, and boards;

(c) pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants; and

(d) require periodic departmental reports of money receipts and their disposition on forms that the designated county or municipal treasurer prescribes.

(4) All local governments:

(a) shall deposit all public money with the county or municipal treasurer within a month of receipt unless otherwise specifically authorized by law;

(b) may not maintain separate bank accounts unless specifically authorized by the county or municipal governing body;

(c) may not maintain separate investments.

(5) The governing body of a county or municipality shall direct the county or municipal treasurer to open separate accounts for the receipt of money for the governing body. Only the county or municipal treasurer may open an account for the receipt of local government money.

History: En. Sec. 4, Ch. 278, L. 2001; amd. Sec. 13, Ch. 114, L. 2003.

7-6-613. Procedure to transfer funds. Money may not be transferred from one fund to another except by resolution of a county or municipal governing body unless the transfer is:

(1) previously authorized by a budget resolution;

(2) provided for by 7-6-614;

(3) made in the usual course of county or municipal business for:

(a) school transfers;

(b) tax increment finance districts;

(c) specialized tax situations;

(d) the purpose of distributing refunds, protested taxes, or interest charges for interest in lieu of registered warrants;

(e) bond sinking fund transfers;

(f) residual equity transfers;

(g) transfers of investments; or

(h) corrections of errors; or

(4) otherwise authorized by statute.

History: En. Sec. 5, Ch. 278, L. 2001.

7-6-614. Procedure to close inactive funds. A county or municipal governing body may transfer balances from inactive funds and close the inactive funds.

History: En. Sec. 6, Ch. 278, L. 2001.

7-6-615. Authorization to maintain petty cash fund. (1) A county or municipal governing body may set aside a sum out of the general fund, which must be known as a petty cash fund. The petty cash fund must be used for the purpose of paying incidental expenses, such as freight charges, express charges, postage, and other similar expenses that must be immediately paid in cash.

(2) In counties that have a county auditor, the county auditor is responsible for expenditures from the petty cash fund. In counties that do not have a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

History: En. Sec. 7, Ch. 278, L. 2001.

7-6-616. Capital improvement funds. (1) A county, municipal, or special district governing body may establish a capital improvement fund for the replacement, improvement, and acquisition of property, facilities, or equipment that costs in excess of $5,000 and that has a life expectancy of 5 years or more.

(2) A capital improvement fund must be formally adopted by the county, municipal, or special district governing body.

(3) The capital improvement fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

(4) Money in the capital improvement fund must be invested as provided by law, and interest and income from the investment of the capital improvement fund must be credited to the fund.

History: En. Sec. 8, Ch. 278, L. 2001; amd. Sec. 1, Ch. 35, L. 2003.

7-6-617. Payment of fees and taxes by credit card and other commercially acceptable means. (1) A local government entity may accept payment by credit card, debit card, charge card, or other commercially acceptable means from a person making payment to the entity of taxes or fees that are legally authorized and imposed.

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax or fee liability is not discharged and the person has not paid the tax or fee until the local government entity receives payment or credit from the institution responsible for making the payment or credit. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person paying the tax or fee.

(b) Upon notice of nonpayment, the local government entity may charge the person who attempted the payment of the tax or fee an amount not to exceed the costs of processing the claim for payment of the tax or fee. The amount that the local government entity charges must be added to the tax or fee due and collected in the same manner as the tax or fee due.

(3) (a) A person who makes payments to a local government entity as provided in this section may be required to pay a convenience fee of up to 3% of the amount of the payment.

(b) The local government entity shall deposit the convenience fees collected in the appropriate fund.

(4) (a) The local government entity may negotiate and enter into agreements with and pay required fees to financial institutions or credit card companies as necessary to facilitate implementation of this section.

(b) A financial institution or credit card company may not prohibit collection of the convenience fee provided for in subsection (3).

(c) Fees paid to a financial institution or credit card company must be paid from an appropriate fund of the local government entity.

(5) A local government entity may enter into cooperative agreements with state agencies as necessary to carry out the provisions of this section.

History: En. Sec. 1, Ch. 268, L. 2003.

7-6-618 through 7-6-620 reserved.

7-6-621. Volunteer firefighters' disability income insurance authorized — voted levy — fund. (1) Disability income insurance, as defined in 33-1-235, purchased for volunteer firefighters must provide that:

(a) payments or benefits are paid only for an injury received as a volunteer firefighter; and

(b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating physician determines that the beneficiary is no longer disabled.

(2) If the voters have approved a levy for the purchase of volunteer firefighters' disability income insurance, the governing body of a local government entity may establish a volunteer firefighters' disability income insurance account. The governing body may hold money in the

account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(3) Money may be expended from the account to purchase disability income insurance coverage meeting the provisions of subsection (1) for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

(4) Money in the account must be invested as provided by law. Interest and income from the investment of money in the account must be credited to the account.

History: **En. Sec. 1, Ch. 485, L. 2007.**

Parts 7 through 10 reserved

Part 11

Tax and Revenue Anticipation Notes

Part Cross-References

School finance, Title 20, ch. 9.

7-6-1101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Governing body" means the legislative authority of a local government, by whatever name designated.

(2) "Local government" means any city, town, county, consolidated city-county, or school district.

(3) "Ordinance" means an ordinance or resolution of the local government.

(4) "Short-term obligations" are tax anticipation notes or revenue anticipation notes that mature at a time not to exceed 13 months from the date issued.

History: **En. Sec. 1, Ch. 481, L. 1985.**

7-6-1102. Short-term obligations authorized. A local government may issue and sell short-term obligations as provided in this part in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which the obligations are issued. The proceeds of the obligations may be expended solely for the purposes for which the taxes or revenues were appropriated and for costs and expenses incident to the issuance and sale thereof. Pending expenditure, the proceeds may be invested as provided by law. The principal and interest on short-term obligations must be repaid from the money derived from the taxes and revenues in anticipation of which they were issued, income from investment of the proceeds of the obligations, and any money otherwise legally available for this purpose.

History: **En. Sec. 2, Ch. 481, L. 1985.**

7-6-1103. Issuance and sale of short-term obligations — procedure. (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount that may be outstanding at any time, the maximum term and interest rate or rates to be borne by the obligations, the manner of sale, the maximum price, the form including bearer or registered as provided in Title 17, chapter 5, part 11, the terms, the conditions, and the covenants of the obligations. Short-term obligations issued under this section must bear fixed or variable rate or rates of interest that the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to the standard or index that the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of investments as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434.

History: **En. Sec. 3, Ch. 481, L. 1985; amd. Sec. 4, Ch. 581, L. 1987; amd. Sec. 1, Ch. 423, L. 1995.**

7-6-1104 reserved.

7-6-1105. Refunding and renewal of short-term obligations. Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations.

Short-term obligations may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

History: En. Sec. 4, Ch. 481, L. 1985.

7-6-1106 through 7-6-1110 reserved.

7-6-1111. Short-term obligations — security. Short-term obligations are general obligations of the local government and must be secured by the taxes and revenues in anticipation of which the short-term obligations were issued and in such other manner as set forth in the ordinance authorizing their issuance.

History: En. Sec. 5, Ch. 481, L. 1985.

7-6-1112. Funds for payment of principal and interest. For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements.

History: En. Sec. 6, Ch. 481, L. 1985.

7-6-1113 and 7-6-1114 reserved.

7-6-1115. Local government debt limitations not to apply to short-term obligations. The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to short-term obligations issued in accordance with this part.

History: En. Sec. 7, Ch. 481, L. 1985.

7-6-1116. Authority cumulative. The authority granted by this part is in addition and supplemental to any other authority granted and does not limit any other authority previously granted to any local government.

History: En. Sec. 8, Ch. 481, L. 1985.

Parts 12 through 14 reserved

Part 15

Resort Tax

7-6-1501. Resort tax — definitions. As used in 7-6-1501 through 7-6-1509, the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(4) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.

(5) "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than 5,500 according to the most recent federal census;

(c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community.

History: **En. Sec. 1, Ch. 729, L. 1985; amd. Sec. 1, Ch. 549, L. 1991; amd. Sec. 1, Ch. 554, L. 1995; Sec. 7-6-4461, MCA 1995; redes. 7-6-1501 by Code Commissioner, 1997; amd. Sec. 1, Ch. 381, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 381 in definition of resort area in (b) and in definition of resort community in (b) at end after "census" deleted "or federal estimate". Amendment effective October 1, 2009.

7-6-1502. Resort community taxing authority — specific delegation. As required by 7-1-112, 7-6-1501 through 7-6-1507 specifically delegate to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-1501 through 7-6-1507.

History: **En. Sec. 2, Ch. 729, L. 1985; Sec. 7-6-4462, MCA 1995; redes. 7-6-1502 by Code Commissioner, 1997.**

7-6-1503. Limit on resort tax rate — goods and services subject to tax. (1) The rate of the resort tax must be established by the election petition or resolution provided for in 7-6-1504, but the rate may not exceed 3%.

(2) (a) The resort tax is a tax on the retail value of all goods and services sold, except for goods and services sold for resale, within the resort community or area by the following establishments:

(i) hotels, motels, and other lodging or camping facilities;

(ii) restaurants, fast food stores, and other food service establishments;

(iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and

(iv) destination ski resorts and other destination recreational facilities.

(b) Establishments that sell luxuries shall collect a tax on such luxuries.

History: **En. Sec. 3, Ch. 729, L. 1985; amd. Sec. 14, Ch. 370, L. 1987; amd. Sec. 3, Ch. 549, L. 1991; amd. Sec. 2, Ch. 554, L. 1995; Sec. 7-6-4463, MCA 1995; redes. 7-6-1503 by Code Commissioner, 1997.**

7-6-1504. Resort tax — election required — procedure — notice. (1) A resort community or area may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax unless the resort tax question has been submitted to the electorate of the resort community or area and approved by a majority of the electors voting on the question.

(2) The resort tax question may be presented to the electors of:

(a) a resort community by a petition of the electors as provided by 7-1-4130, 7-5-132, and 7-5-134 through 7-5-137 or by a resolution of the governing body of the resort community; or

(b) a resort area by a resolution of the board of county commissioners, following receipt of a petition of electors as provided in 7-6-1508.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

(a) the rate of the resort tax;

(b) the duration of the resort tax;

(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) the purposes that may be funded by the resort tax revenue.

(5) Upon receipt of an adequate petition, the governing body may:

(a) call a special election on the resort tax question; or

(b) have the resort tax question placed on the ballot at the next regularly scheduled election.

(6) (a) Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall publish notice of the goods and services subject to the resort tax, in a newspaper that meets the qualifications of subsection (6)(b). The notice must be published twice, with at least 6 days separating publications. The first publication must be no more than 30 days prior to the election and the last no less than 3 days prior to the election.

(b) The newspaper must be:

(i) of general, paid circulation with a second-class mailing permit;

(ii) published at least once a week; and

(iii) published in the county where the election will take place.

(7) The question of the imposition of a resort tax may not be placed before the electors more than once in any fiscal year.

History: **En. Sec. 4, Ch. 729, L. 1985; amd. Sec. 4, Ch. 549, L. 1991; amd. Sec. 3, Ch. 554, L. 1995; Sec. 7-6-4464, MCA 1995; redes. 7-6-1504 by Code Commissioner, 1997.**

7-6-1505. Resort tax administration. (1) In this section, "governing body" means:

(a) the governing body of a resort community;

(b) if the resort tax has been approved by the electors of a resort area, the board of county commissioners; or

(c) if the electors of the resort area establish a resort area district, the district board of directors.

(2) Not less than 30 days prior to the date that the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times that taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-1503;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax.

History: **En. Sec. 5, Ch. 729, L. 1985; amd. Sec. 5, Ch. 549, L. 1991; amd. Sec. 21, Ch. 327, L. 1997; Sec. 7-6-4465, MCA 1995; redes. 7-6-1505 by Code Commissioner, 1997.**

7-6-1506. Use of resort community tax revenues — bond issue — pledge. (1) Unless otherwise restricted by the voter-approved tax authorization provided for in 7-6-1504, a resort community may appropriate and expend revenues derived from a resort tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) A resort community may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality as the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A resort community may pledge for repayment of bonds issued under this section the revenues derived from a resort tax, special assessments levied for and revenues collected from

the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the resort community. Such bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds the municipality determines that the resort tax revenues, special assessments levied for and revenues from such facilities, improvements or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal thereof and interest thereon when due. Bonds may not be issued pledging proceeds of the resort tax for repayment unless the municipality in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenues expected to be derived from the resort tax, less the amount required to reduce property taxes pursuant to 7-6-1507, equals at least 125% of the average amount of the principal and interest payable from the resort tax revenues on the bonds and any other outstanding bonds payable from the resort tax except any bonds to be refunded upon the issuance of the proposed bonds.

History: En. Sec. 6, Ch. 729, L. 1985; amd. Sec. 1, Ch. 40, L. 1987; Sec. 7-6-4466, MCA 1995; redes. 7-6-1506 by Code Commissioner, 1997.

Cross-References

Limitation on indebtedness, Art. VIII, sec. 10, Mont. Const.; 7-7-2101, 7-14-2524.

7-6-1507. Resort community tax — property tax relief. (1) Annually anticipated receipts from the resort tax must be applied to reduce the municipal property tax levy for the fiscal year in an amount equal to at least 5% of the resort tax revenues derived during the preceding fiscal year.

(2) A resort community that received more resort tax revenues than had been included in the annual municipal budget shall establish a municipal property tax relief fund. All resort tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace municipal property taxes in the ensuing fiscal year.

History: En. Sec. 7, Ch. 729, L. 1985; Sec. 7-6-4467, MCA 1995; redes. 7-6-1507 by Code Commissioner, 1997.

7-6-1508. Establishment of a resort area — taxing authority — approval by electorate. (1) The establishment of a resort area for the purpose of imposing a resort tax may be initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least 15% of the electors residing in the proposed area.

(2) The petition must include a proposal to impose a resort tax within the proposed resort area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-1504.

(3) Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the electors residing in the proposed resort area as provided in 7-6-1504.

History: En. Sec. 2, Ch. 549, L. 1991; Sec. 7-6-4468, MCA 1995; redes. 7-6-1508 by Code Commissioner, 1997.

7-6-1509. Use of resort area tax. (1) (a) Except as provided in subsection (1)(b) or unless otherwise provided by the resolution approved by the electors under 7-6-1504, the board of county commissioners shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

(b) If the electors of a resort area have established a resort area district, the district board of directors shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

(2) If the electors of a resort area have not established a resort area district, the resort area shall reimburse the board of county commissioners for costs associated with the collection, administration, and litigation of the resort area tax.

History: En. Sec. 6, Ch. 549, L. 1991; amd. Sec. 22, Ch. 327, L. 1997; Sec. 7-6-4469, MCA 1995; redes. 7-6-1509 by Code Commissioner, 1997.

7-6-1510 through 7-6-1530 reserved.

7-6-1531. Resort area district — definitions. For the purposes of 7-6-1531 through 7-6-1550, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the resort area district.
(2) "Resort area" means a resort area created under 7-6-1508.
(3) "Resort area district" means a district created under 7-6-1531 through 7-6-1550 that has been established as a resort area under 7-6-1508.

History: **En. Sec. 1, Ch. 327, L. 1997.**

7-6-1532. Resort area district authorized. Electors residing within the boundaries of a resort area may create a resort area district by proceeding under the provisions of 7-6-1531 through 7-6-1550.

History: **En. Sec. 2, Ch. 327, L. 1997.**

7-6-1533. Petition to create resort area district. (1) Electors residing within a resort area may present, at a regular meeting, a petition requesting the establishment of a resort area district to the board of county commissioners of the county in which the proposed resort area district is located. The petition must be signed by at least 10% of the registered voters within the resort area.

(2) When the area to be included within the proposed resort area district lies in more than one county, the electors within a resort area shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 10% of the registered voters of the resort area that lies within that county.

(3) The petition must include a description or map of the existing resort area boundaries. The petition may not describe proposed resort area district boundaries that are different from the existing resort area boundaries designated pursuant to 7-6-1508.

History: **En. Sec. 3, Ch. 327, L. 1997.**

7-6-1534. Resort area district — notice of petition — hearing required. (1) The board of county commissioners shall publish the text of the petition described in 7-6-1533, as provided in 7-1-2121, in each county in which the proposed resort area district lies and shall publish the date, time, and place that a public hearing on the petition will be held.

(2) In addition to the requirements of subsection (1), the board of county commissioners shall publish the text of the petition described in 7-6-1533 in a newspaper of general circulation in the county within which the proposed resort area district lies.

(3) A person wishing to comment on the creation of the proposed resort area district may file, by first-class mail or otherwise, comments with the clerk and recorder of the county in which the proposed resort area district lies.

(4) If the resort area lies within two or more counties, the provisions of this section apply to each county.

History: **En. Sec. 4, Ch. 327, L. 1997.**

7-6-1535. Resort area district — hearing on petition. (1) At the hearing for which notification has occurred under 7-6-1533, the board of county commissioners shall accept comments supporting and opposing the petition. The board of county commissioners may adjourn the hearing from time to time, but the hearing must be completed within 4 weeks of its commencement.

(2) Upon concluding the hearing on the petition, the board of county commissioners shall determine whether the petition complies with the requirements of 7-6-1531 through 7-6-1550 and enter its determination into the minutes of a regularly scheduled meeting.

History: **En. Sec. 5, Ch. 327, L. 1997.**

7-6-1536. Resort area district — election required — notice. (1) Upon a determination that the petition complies with the provisions of 7-6-1531 through 7-6-1550, the board of county commissioners of each county in which the resort area lies shall give notice of an election to be held in the proposed resort area district for the purpose of determining whether a resort area district should be created. The election must be held in conjunction with a regular or primary election.

(2) Notice of the election must be made as provided in 13-1-108 and must:
(a) describe the purpose of the proposed resort area district; and
(b) state the name of the proposed resort area district, which must include the words "resort area district".

History: **En. Sec. 6, Ch. 327, L. 1997.**

7-6-1537. Conduct of election on question of creating resort area district. The election on the question of creating a resort area district must be conducted as provided by Title 13 with respect to general and school elections, except as otherwise provided by 7-6-1531 through 7-6-1550.

History: **En. Sec. 7, Ch. 327, L. 1997.**

7-6-1538. Qualifications to vote on question of creating resort area district. A person is not entitled to vote at an election authorized by 7-6-1531 through 7-6-1550 unless the person possesses all of the qualifications required of electors under the general election laws of the state and is a resident of the proposed resort area district.

History: **En. Sec. 8, Ch. 327, L. 1997.**

7-6-1539. Resolution creating resort area district upon favorable vote. (1) If a majority of the votes cast on the question of creating the resort area district are in favor of creating the resort area district, the board of county commissioners shall enter into its minutes an order, by resolution, creating the resort area district.

(2) Immediately following adoption of the resolution creating the resort area district, the board of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution.

History: **En. Sec. 9, Ch. 327, L. 1997.**

7-6-1540. Resort area district — certificate of incorporation from secretary of state. Within 10 days of receiving a copy of the resolution described in 7-6-1539, the secretary of state shall issue a certificate stating that the resort area district has been established under the laws of the state of Montana. The secretary of state shall file a copy of the certificate with the clerk and recorder in each county in which the resort area district is located.

History: **En. Sec. 10, Ch. 327, L. 1997.**

7-6-1541. General powers of resort area district. (1) A resort area district created under 7-6-1531 through 7-6-1550 may:

(a) have perpetual succession;

(b) sue and be sued in any court of competent jurisdiction;

(c) acquire by any legal means real and personal property necessary to the full exercise of its powers; and

(d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers.

(2) (a) The board for a resort area district that does not have perpetual succession may submit the question of extension of the term of the resort area district directly to the voters. If the electorate extends the term of the resort area district, the provisions of this part continue to apply.

(b) The board may not submit a question to the voters to extend the term of a resort area district until the expiration of at least half the existing term of the resort tax, as provided for in 7-6-1504. If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.

(3) The board shall exercise the powers described in 7-6-1531 through 7-6-1550.

History: **En. Sec. 11, Ch. 327, L. 1997; amd. Sec. 1, Ch. 393, L. 2005.**

7-6-1542. Resort area district board powers related to administration and expenditure of resort tax revenue. The board of a resort area district created under 7-6-1531 through 7-6-1550 may:

(1) appropriate and expend revenue from a resort tax for any activity, undertaking, or administrative service authorized in the resolution creating a resort area and adopting a resort tax; and

(2) adopt administrative ordinances necessary to aid in the collection or reporting of resort taxes and in the expenditure of resort tax revenue.

History: **En. Sec. 12, Ch. 327, L. 1997.**

7-6-1543. Resort area district to be governed by board — composition — qualifications — term of office. (1) The board is the governing body of the resort area district and is composed of five members, to be elected as provided in 7-6-1544.

(2) To qualify for the board, a person must be a resident of the resort area district.

(3) Directors shall serve for a term of 4 years from the date of their election, except, of the directors elected at the first regular election, three directors shall serve for a term of 2 years and two shall serve for a term of 4 years.

(4) At the first meeting of the board, the directors shall determine by lot which of them shall serve the terms less than 4 years. Each succeeding term is 4 years.

History: En. Sec. 13, Ch. 327, L. 1997.

7-6-1544. Resort area district board — election — term. (1) The first election of the board must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

(2) A petition of nomination, signed by at least five electors from within the resort area district, may be filed with the election administrator in any county containing a portion of the resort area district. A nominating petition must be filed between 135 days and 75 days before the election.

(3) (a) If the number of candidates filing a petition is insufficient to complete board membership, the existing board shall appoint as many members as are needed to complete the five-member board.

(b) An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of votes cast in the election, the appointee's term expires, and the board shall initiate the process described in this subsection (3).

(c) The term of a resort area district board member appointed and subsequently elected under the provisions of this subsection (3) is 4 years.

History: En. Sec. 14, Ch. 327, L. 1997; amd. Sec. 2, Ch. 393, L. 2005; amd. Sec. 3, Ch. 44, L. 2007.

7-6-1545. Resort area district board election — canvass of vote. (1) The board of county commissioners shall canvass the returns of the first election of the board. After the first election and canvass, the board shall meet as a canvassing board for resort area district elections and shall canvass the returns within 4 days after any resort area district election.

(2) If the resort area district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the resort area district shall canvass the returns of the first election.

History: En. Sec. 15, Ch. 327, L. 1997.

7-6-1546. Resort area district board — vacancy. (1) If a vacancy on the board occurs by death, resignation, or removal from the resort area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

(2) An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of the votes cast in the election, the appointee's term expires and the board shall initiate the process to fill the vacancy as provided in subsection (1).

History: En. Sec. 16, Ch. 327, L. 1997; amd. Sec. 3, Ch. 393, L. 2005.

7-6-1547. Resort area district board — meetings. (1) The board shall meet at a regularly scheduled time and place. The board shall provide public notice of any change in the time and place of the board meetings.

(2) All board meetings are open to the public unless, under the terms of Article II, section 9, of the Montana constitution or 2-3-203, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure.

(3) A majority of the board constitutes a quorum for the transaction of business.

(4) The board may act only by ordinance or resolution.

History: En. Sec. 17, Ch. 327, L. 1997.

7-6-1548. Referendum to dissolve resort area district. (1) Upon receipt of a petition to dissolve the resort area district, signed by more than 50% of the electors of the resort area district, the board shall set a date for a public hearing on dissolution of the resort area district. The hearing date may not be fewer than 45 days or more than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the resort area district to present claims owed by the resort area district to the board prior to the date set for the dissolution hearing.

(2) After the hearing, the board shall submit the question of the resort area district's dissolution to a vote of the electors.

History: **En. Sec. 18, Ch. 327, L. 1997.**

7-6-1549. Conduct of election on question of dissolving resort area district — qualification of electors. (1) The election on the question of dissolving the resort area district must be conducted as provided by Title 13 with respect to general and school elections, except as otherwise provided by 7-6-1531 through 7-6-1550.

(2) The qualifications for electors described in 7-6-1538 apply for electors on the question of dissolution.

History: **En. Sec. 19, Ch. 327, L. 1997.**

7-6-1550. Resolution dissolving resort area district upon favorable vote. (1) If a majority of the votes cast on the question of dissolving the resort area district are in favor of dissolving the resort area district, the board of county commissioners shall enter into its minutes an order, by resolution, dissolving the resort area district. The resolution must contain, explicitly or by reference, an orderly plan of dissolution.

(2) Immediately following adoption of the resolution dissolving the resort area district, the board of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution.

(3) The resort area district is dissolved as provided in the plan of dissolution.

History: **En. Sec. 20, Ch. 327, L. 1997.**

Part 16
Impact Fees to Fund Capital Improvements

7-6-1601. Definitions. As used in this part, the following definitions apply:

(1) (a) "Capital improvements" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.

(3) "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

(4) "Governmental entity" means a county, city, town, or consolidated government.

(5) (a) "Impact fee" means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

(iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in 7-6-1602.

(7) "Public facilities" means:

(a) a water supply production, treatment, storage, or distribution facility;

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

(e) a police, emergency medical rescue, or fire protection facility; and

(f) other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by:

(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or

(ii) a unanimous vote of the board of county commissioners of a county government.

History: En. Sec. 1, Ch. 299, L. 2005.

7-6-1602. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(2) The service area report is a written analysis that must:

(a) describe existing conditions of the facility;

(b) establish level-of-service standards;

(c) forecast future additional needs for service for a defined period of time;

(d) identify capital improvements necessary to meet future needs for service;

(e) identify those capital improvements needed for continued operation and maintenance of the facility;

(f) make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

(h) establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establish the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) have a component of the budget of the governmental entity that:

(i) schedules construction of public facility capital improvements to serve projected growth;

(ii) projects costs of the capital improvements;

(iii) allocates collected impact fees for construction of the capital improvements; and

(iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

(3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).

(4) The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.

(5) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(6) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2).

(7) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

History: En. Sec. 2, Ch. 299, L. 2005; amd. Sec. 1, Ch. 358, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 358 in (1) at end inserted "a service area report"; in (2) at beginning substituted "The service area report is a written analysis that must" for "documentation that"; inserted (3) describing service area report; in (4) at beginning substituted "service area report that supports" for "data sources and methodology supporting"; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Special improvement districts, Title 7, ch. 12, part 41.

7-6-1603. Collection and expenditure of impact fees — refunds or credits — mechanism for appeal required. (1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

History: En. Sec. 3, Ch. 299, L. 2005; amd. Sec. 2, Ch. 358, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 358 in (5) at end of first sentence substituted "7-6-1602(2)(j)" for "7-6-1602(1)(j)". Amendment effective July 1, 2009.

7-6-1604. Impact fee advisory committee. (1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community and one certified public accountant. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

History: En. Sec. 4, Ch. 299, L. 2005.

Parts 17 through 20 reserved

Part 21
Office of County Treasurer

Part Cross-References

Term of Treasurer — first Monday in March, 7-4-2205.

7-6-2101. Procedure if county treasurer dies in office. (1) In case of the death of a county treasurer, the treasurer's legal representatives shall deliver up all official money, books, accounts, papers, and documents that come into their possession.

(2) A percentage may not be allowed to the treasurer on any money received by the treasurer from the legal representative of a predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part); amd. Sec. 474, Ch. 61, L. 2007.

Cross-References

Personal representatives, Title 72, ch. 3, part 5.

7-6-2102. Limitation on number of deputy county treasurers. (1) Except as provided in subsection (2), the whole number of deputies allowed the county treasurer must not exceed:

(a) two in counties of the first class;

(b) one in counties of all other classes.

(2) The board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

Cross-References

Deputy officers, Title 7, ch. 4, part 24.

Authorization to exceed limitation on number of deputies, 7-4-2402.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-6-2103. Suspension of county treasurer in case of misconduct. Whenever an action based upon official misconduct is commenced against a county treasurer, the board of county commissioners may in its discretion suspend the treasurer from office until the suit is determined and may appoint some person to fill the vacancy.

History: En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907; re-en. Sec. 4768, R.C.M. 1921; Cal. Pol. C. Sec. 4162; re-en. Sec. 4768, R.C.M. 1935; R.C.M. 1947, 16-2622; amd. Sec. 475, Ch. 61, L. 2007.

Cross-References
Vacancy in county office, 7-4-2206.

7-6-2104 through 7-6-2110 reserved.

7-6-2111. Duties of county treasurer. The county treasurer shall:

(1) receive all money belonging to the county and all other money directed to be paid to the treasurer by law, safely keep the money, apply and pay the money out, and account for the money as required by law;

(2) keep an account of the receipt and expenditures of the money in books provided for the purpose, in which must be entered:

(a) the amount and the time when, from whom, and on what account all money was received;

(b) the amount and time when, to whom, and on what account all disbursements were made;

(3) keep books so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;

(4) disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(1) thru (5); amd. Sec. 10, Ch. 430, L. 1995; amd. Sec. 45, Ch. 278, L. 2001.

Cross-References
Management of school money, Title 7, ch. 6, part 28.
Payments by state to local government entities — notice, 17-8-311.
School finance, Title 20, ch. 9.

7-6-2112. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4361, Pol. C. 1895; re-en. Sec. 2997, Rev. C. 1907; re-en. Sec. 4761, R.C.M. 1921; Cal. Pol. C. Sec. 4155; re-en. Sec. 4761, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1941; R.C.M. 1947, 16-2612; amd. Sec. 3, Ch. 252, L. 1979; amd. Sec. 11, Ch. 430, L. 1995.

7-6-2113. Effect of failure to make treasurer's report. If a county treasurer neglects or refuses to settle or report as required in 7-6-612, the county treasurer forfeits and shall pay to the county the sum of $500 for each neglect or refusal. The board of county commissioners shall institute suits for the recovery of the sum.

History: En. Sec. 4362, Pol. C. 1895; re-en. Sec. 2998, Rev. C. 1907; re-en. Sec. 4762, R.C.M. 1921; Cal. Pol. C. Sec. 4156; re-en. Sec. 4762, R.C.M. 1935; R.C.M. 1947, 16-2613; amd. Sec. 47, Ch. 278, L. 2001.

Cross-References
County Attorney — actions to recover money, 7-4-2713.

7-6-2114. Inspection of treasurer's books and records. (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer shall permit the department of administration and county clerk or the board of county commissioners to examine the treasurer's books and count the money in the treasury when they wish to make an examination or counting.

History: (1)En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907; re-en. Sec. 4770, R.C.M. 1921; Cal. Pol. C. Sec. 4164; re-en. Sec. 4770, R.C.M. 1935; Sec. 16-2624, R.C.M. 1947; (2)En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; Sec. 16-2625, R.C.M. 1947; R.C.M. 1947, 16-2624, 16-2625(1); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 31, Ch. 483, L. 2001.

Cross-References

Right to examine documents, Art. II, sec. 9, Mont. Const.

Audits of political subdivisions, Title 2, ch. 7, part 5.

7-6-2115. Manner of settling accounts. (1) The treasurer shall settle accounts relating to the collection, care, and disbursement of public revenue with the county clerk on the first Monday of each month. For the purpose of making the settlements, the treasurer shall make out a statement, under oath, of the amount of money or other property received prior to the period of the settlement, the sources of the money or property, and the amount of payments or disbursements and to whom, with the amount remaining on hand. The treasurer shall, in the settlements, deposit all redeemed warrants and take the county clerk's receipt for the warrants.

(2) The treasurer shall make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control of the accounts.

History: En. Sec. 4360, Pol. C. 1895; re-en. Sec. 2996, Rev. C. 1907; re-en. Sec. 4760, R.C.M. 1921; Cal. Pol. C. Sec. 4154; re-en. Sec. 4760, R.C.M. 1935; R.C.M. 1947, 16-2611; amd. Sec. 476, Ch. 61, L. 2007.

7-6-2116. Receipt for money paid to county treasurer. (1) Except as provided in subsection (2), when money is paid to the county treasurer, the treasurer shall issue a receipt, in triplicate, for the money, the original of which must be delivered to the person paying the money, the duplicate of which must be delivered to the county clerk, and the triplicate must be retained in the office.

(2) When any money is paid to the county treasurer through the mail or by any electronic means, the treasurer shall issue receipts for the money. The original receipt must be retained in the treasurer's office, and a duplicate must be delivered to the county clerk. Upon request, the county treasurer shall issue a receipt to the person paying the money.

History: En. Sec. 4351, Pol. C. 1895; re-en. Sec. 2987, Rev. C. 1907; re-en. Sec. 4751, R.C.M. 1921; Cal. Pol. C. Sec. 4146; amd. Sec. 1, Ch. 92, L. 1923; re-en. Sec. 4751, R.C.M. 1935; R.C.M. 1947, 16-2602; amd. Sec. 1, Ch. 599, L. 1987; amd. Sec. 477, Ch. 61, L. 2007.

7-6-2117. Receipt of money from county attorney. (1) The county attorney shall, on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by oath, of all money received by the county attorney in an official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

(2) If the county attorney refuses or neglects to account for and pay over money received as required by subsection (1), the county treasurer shall bring an action against the county attorney for the recovery of the money in the name of the county and may recover in the action, in addition to the amount received, 50% of the amount by way of damages.

History: (1)En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; (2)En. Sec. 4363, Pol. C. 1895; re-en. Sec. 2999, Rev. C. 1907; re-en. Sec. 4763, R.C.M. 1921; Cal. Pol. C. Sec. 4157; re-en. Sec. 4763, R.C.M. 1935; Sec. 16-2614, R.C.M. 1947; R.C.M. 1947, 16-2614, 16-3101(5); amd. Sec. 478, Ch. 61, L. 2007.

7-6-2118. Receipt of money from predecessor county treasurer. A percentage may not be allowed to the treasurer on any money received from the treasurer's predecessor in office.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part); amd. Sec. 479, Ch. 61, L. 2007.

7-6-2119 through 7-6-2130 reserved.

7-6-2131. Fees of county treasurer. The county treasurer shall receive the sum of $25 plus actual costs incurred for making and acknowledging a deed for property sold for delinquent taxes.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907; re-en. Sec. 4920, R.C.M. 1921; re-en. Sec. 4920, R.C.M. 1935; R.C.M. 1947, 25-234; amd. Sec. 1, Ch. 100, L. 1989.

Cross-References

Collection and disposal of fees, 7-4-2511.

7-6-2132 through 7-6-2140 reserved.

7-6-2141. Coordination of state revenue collected by counties — duties of department of administration. (1) The department of administration shall advise the counties concerning any questions involving collection of revenue on behalf of the state. The department shall prepare and distribute a county collections manual to county treasurers, setting forth the procedures and forms to be used by the counties in collecting revenue for the state. The manual must be revised at least biennially, with the manual and revisions being sent to each county treasurer.

(2) State agencies receiving revenue collected by the counties shall coordinate the collection of revenue with the department. Necessary instructions or procedures must be submitted to the counties by state agencies through the department to provide coordination and ensure placement in the county collections manual.

History: En. Sec. 1, Ch. 369, L. 1987; amd. Sec. 32, Ch. 483, L. 2001.

Part 22
General Provisions Related to Counties

7-6-2201. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701(part); amd. Sec. 4, Ch. 252, L. 1979.

7-6-2202. Duties of county clerk related to finance. (1) The county clerk shall draw warrants on the county treasury in favor of all persons entitled to the warrants in payment:

(a) of all claims and demands chargeable against the county that have been legally examined, allowed, and ordered paid by the board of county commissioners; and

(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) The county clerk shall keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk must be furnished by the treasurer with a duplicate of the receipt issued to the person. The duplicate receipt must be filed in the office of the county clerk, and the county clerk shall charge the treasurer with the amount of the deposit.

(3) The county clerk shall make the annual statement prescribed by the department of administration.

History: En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; R.C.M. 1947, 16-2917(part); amd. Sec. 5, Ch. 252, L. 1979; amd. Sec. 12, Ch. 430, L. 1995; amd. Sec. 48, Ch. 278, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001.

7-6-2203. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R.C.M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927; re-en. Sec. 4814, R.C.M. 1935; amd. Sec. 72, Ch. 348, L. 1974; amd. Sec. 31, Ch. 213, L. 1975; R.C.M. 1947, 16-2924; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 177, L. 1989; amd. Sec. 13, Ch. 430, L. 1995.

7-6-2204. Cash verification by county clerk. The county clerk and recorder, at the close of business each month, shall count the cash in the office of the county treasurer and shall retain a copy of the counting in the county clerk's office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; R.C.M. 1947, 16-2625(2); amd. Sec. 480, Ch. 61, L. 2007.

7-6-2205 and 7-6-2206 reserved.

7-6-2207. Deposit of nontax revenue. Except for nontax revenue earmarked for a specific fund, the county treasurer may deposit in the general fund any nontax revenue of $25 or less received by the county.

History: En. Sec. 1, Ch. 93, L. 1991.

7-6-2208 through 7-6-2210 reserved.

7-6-2211. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 93, L. 1935; re-en. Sec. 4447.1, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1973; amd. Sec. 36, Ch. 566, L. 1977; R.C.M. 1947, 16-808; amd. Sec. 40, Ch. 614, L. 1981; amd. Sec. 9, Ch. 220, L. 1985; amd. Sec. 14, Ch. 430, L. 1995.

7-6-2212. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R.C.M. 1921; amd. Sec. 1, Ch. 141, L. 1925; re-en. Sec. 4632, R.C.M. 1935; amd. Sec. 69, Ch. 348, L. 1974; amd. Sec. 27, Ch. 213, L.

1975; R.C.M. 1947, 16-2049; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 6, Ch. 179, L. 1995.

7-6-2213. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907; re-en. Sec. 4745, R.C.M. 1921; re-en. Sec. 4745, R.C.M. 1935; R.C.M. 1947, 16-2423; amd. Sec. 15, Ch. 430, L. 1995.

7-6-2214. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 4337, Pol. C. 1895; re-en. Sec. 2982, Rev. C. 1907; re-en. Sec. 4746, R.C.M. 1921; re-en. Sec. 4746, R.C.M. 1935; R.C.M. 1947, 16-2424.

7-6-2215. Repealed. Sec. 1, Ch. 135, L. 1979.
History: En. Sec. 4338, Pol. C. 1895; re-en. Sec. 2983, Rev. C. 1907; re-en. Sec. 4747, R.C.M. 1921; re-en. Sec. 4747, R.C.M. 1935; R.C.M. 1947, 16-2425.

7-6-2216. Repealed. Sec. 1, Ch. 135, L. 1979.
History: En. Sec. 4339, Pol. C. 1895; re-en. Sec. 2984, Rev. C. 1907; re-en. Sec. 4748, R.C.M. 1921; re-en. Sec. 4748, R.C.M. 1935; R.C.M. 1947, 16-2426.

7-6-2217. Administration of relief received from federal agencies. In any county where aid is received from the reconstruction finance corporation or any other similar agencies, the county commissioners of such county shall be authorized to employ the necessary help and incur such expenses as are necessary in the administration of such relief; and in so doing the board may appropriate such funds as are necessary from the general fund of said county. Such appropriation shall be held and deemed legal and valid notwithstanding the provisions of the budget act.
History: En. Sec. 1, Ch. 44, L. 1933; re-en. Sec. 4520.1, R.C.M. 1935; R.C.M. 1947, 16-1162.

7-6-2218. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. 16-1185 by Sec. 1, Ch. 70, L. 1974; amd. Sec. 1, Ch. 75, L. 1975; R.C.M. 1947, 16-1185; amd. Sec. 1, Ch. 19, L. 1983.

7-6-2219. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. 16-1186 by Sec. 1, Ch. 54, L. 1975; R.C.M. 1947, 16-1186.

7-6-2220. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. 16-1187 by Sec. 2, Ch. 54, L. 1975; R.C.M. 1947, 16-1187.

7-6-2221. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. 16-1188 by Sec. 3, Ch. 54, L. 1975; R.C.M. 1947, 16-1188; amd. Sec. 6, Ch. 252, L. 1979.

7-6-2222 and 7-6-2223 reserved.

7-6-2224. Long-short cash account. A governing body of a county may create a cash over or short account consistent with accepted accounting practice.
History: En. Sec. 1, Ch. 204, L. 1993.

7-6-2225. County hard-rock mine trust account — expenditure restrictions. (1) The governing body of a county receiving an allocation under 15-37-117(1)(e) shall establish a county hard-rock mine trust account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the hard-rock mine trust account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining-related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county shall allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county and may use the remaining funds in the hard-rock mine trust account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit through assistance to existing business for retention and expansion or to assist new business;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the hard-rock mine trust account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the hard-rock mine trust account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

History: En. Sec. 9, Ch. 672, L. 1989; amd. Sec. 5, Ch. 577, L. 1995; amd. Sec. 1, Ch. 144, L. 1999; amd. Sec. 1, Ch. 598, L. 2005.

7-6-2226. Metal mines license tax account. (1) The governing body of a county receiving tax collections under 15-37-117(1)(e) may establish a metal mines license tax account to be used to hold the collections. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account as provided in 7-6-2225.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines license tax account must be credited to the account.

History: En. Sec. 17, Ch. 672, L. 1989; amd. Sec. 6, Ch. 577, L. 1995; amd. Sec. 2, Ch. 144, L. 1999; amd. Sec. 2, Ch. 598, L. 2005.

7-6-2227 through 7-6-2229 reserved.

7-6-2230. County land information account — creation — purposes — uses. (1) The governing board of each county shall establish a county land information account.

(2) The governing body of each county is responsible for deposits to and expenditures from the account.

(3) Subject to the provisions of subsection (4), a county may use the funds in the county land information account:

(a) for local geographic information system projects to meet the local operations needs of the county or a municipality within the county;

(b) for local land information data collection, maintenance, and dissemination projects;

(c) for intergovernmental or interagency geographic information system and land information data collection, maintenance, or dissemination projects with any other county, city, state, federal, or Indian tribal agency; or

(d) as matching funds for other state, federal, private, or other fund sources to accomplish the purposes of this section.

(4) (a) Except as provided in subsection (4)(b), use of funds in the county land information accounts must comply with applicable, existing state standards for the geographic information system and land information.

(b) A county may, upon approval of the county governing board, use funds in the county land information account for projects that collect, maintain, disseminate, or otherwise use the geographic information system or land information for which state standards do not exist.

(5) Funds deposited to and expended from the county land information account are subject to audit pursuant to Title 2, chapter 7, part 5.

History: En. Sec. 11, Ch. 135, L. 2005.

Part 23
County Budget Law
(Repealed)

7-6-2301. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 9, Ch. 148, L. 1929; re-en. Sec. 4613.9, R.C.M. 1935; R.C.M. 1947, 16-1910; amd. Sec. 29, Ch. 575, L. 1981.

7-6-2302. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 8, Ch. 148, L. 1929; re-en. Sec. 4613.8, R.C.M. 1935; amd. Sec. 67, Ch. 348, L. 1974; amd. Sec. 26, Ch. 213, L. 1975; R.C.M. 1947, 16-1909; amd. Sec. 7, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 30, Ch. 575, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 16, Ch. 430, L. 1995.

7-6-2303. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 10, Ch. 148, L. 1929; re-en. Sec. 4613.10, R.C.M. 1935; R.C.M. 1947, 16-1911; amd. Sec. 31, Ch. 575, L. 1981.

7-6-2304 through 7-6-2310 reserved.

7-6-2311. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part); amd. Sec. 1, Ch. 405, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 17, Ch. 430, L. 1995.

7-6-2312. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part); amd. Sec. 18, Ch. 430, L. 1995.

7-6-2313. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(1), (4); amd. Sec. 2, Ch. 405, L. 1979.

7-6-2314. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(2), (3); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 19, Ch. 430, L. 1995.

7-6-2315. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 201, L. 1985; amd. Sec. 1, Ch. 206, L. 1985; amd. Sec. 20, Ch. 430, L. 1995.

7-6-2316. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 8, Ch. 252, L. 1979; amd. Sec. 2, Ch. 206, L. 1985; amd. Sec. 1, Ch. 84, L. 1989; amd. Sec. 21, Ch. 430, L. 1995.

7-6-2317. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(1); amd. Sec. 9, Ch. 252, L. 1979; amd. Sec. 2, Ch. 84, L. 1989; amd. Sec. 22, Ch. 430, L. 1995; amd. Sec. 11, Ch. 51, L. 1999.

7-6-2318. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(2); amd. Sec. 23, Ch. 430, L. 1995.

7-6-2319. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(3); amd. Sec. 24, Ch. 430, L. 1995; amd. Sec. 12, Ch. 584, L. 1999.

7-6-2320. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(5); amd. Sec. 1, Ch. 702, L. 1983; amd. Sec. 25, Ch. 430, L. 1995.

7-6-2321. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(6); amd. Sec. 1, Ch. 726, L. 1985; amd. Sec. 3, Ch. 26, Sp. L. June 1986; amd. Sec. 3, Ch. 84, L. 1989; amd. Sec. 26, Ch. 430, L. 1995; amd. Sec. 13, Ch. 584, L. 1999.

7-6-2322. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(7); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-2323. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 230, L. 1987; amd. Sec. 1, Ch. 194, L. 1991.

7-6-2324. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 275, L. 1979; amd. Sec. 2, Ch. 702, L. 1983; amd. Sec. 27, Ch. 430, L. 1995.

7-6-2325. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 484, L. 1985; amd. Sec. 28, Ch. 430, L. 1995.

7-6-2326. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(4); amd. Sec. 7, Ch. 349, L. 1985.

7-6-2327. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2328. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2329. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 170, L. 1943; re-en. Sec. 4613.4A, R.C.M. 1935; R.C.M. 1947, 16-1905.

7-6-2330. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(8); amd. Sec. 29, Ch. 430, L. 1995.

7-6-2331. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 7, Ch. 148, L. 1929; re-en. Sec. 4613.7, R.C.M. 1935; R.C.M. 1947, 16-1908; amd. Sec. 1, Ch. 168, L. 1989; amd. Sec. 30, Ch. 430, L. 1995.

7-6-2332 through 7-6-2334 reserved.

7-6-2335. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 86, L. 1999.

7-6-2336 through 7-6-2340 reserved.

7-6-2341. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part).

7-6-2342. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 10, Ch. 252, L. 1979; amd. Sec. 8, Ch. 349, L. 1985.

7-6-2343. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 11, Ch. 252, L. 1979.

7-6-2344. Repealed. Sec. 1, Ch. 104, L. 1995.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 12, Ch. 252, L. 1979; amd. Sec. 387, Ch. 571, L. 1979.

7-6-2345. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(6), (7).

7-6-2346 and 7-6-2347 reserved.

7-6-2348. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 347, L. 1991; amd. Sec. 1, Ch. 169, L. 1993.

7-6-2349 and 7-6-2350 reserved.

7-6-2351. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 692, L. 1979; amd. Sec. 2, Ch. 254, L. 1983; amd. Sec. 3, Ch. 206, L. 1985.

7-6-2352. Repealed. Sec. 61, Ch. 278, L. 2001; secs. 52(1), 63(3), Ch. 585, L. 2001.

History: En. Sec. 2, Ch. 692, L. 1979; amd. Sec. 1, Ch. 465, L. 1981; amd. Secs. 1, 2, Ch. 254, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 6, Ch. 680, L. 1985; amd. Sec. 2, Ch. 416, L. 1987; amd. Sec. 20, Ch. 489, L. 1991; amd. Sec. 6, Ch. 704, L. 1991; amd. Sec. 2, Ch. 330, L. 1993.

Part 24
County Auditor and Claims Against County

Part Cross-References

Interest on overdue accounts, Title 7, ch. 6, part 4.

7-6-2401. Creation of office of county auditor. (1) The office of county auditor exists in all counties of the first, second, third, or fourth class that have a population in excess of 15,000.

(2) County commissioners in counties to which subsection (1) does not apply may create a county auditor's position, either as a full-time or a part-time position or in combination with another position pursuant to 7-4-2301.

(3) The provisions of 7-6-2403 through 7-6-2412 do not apply to counties that do not have county auditors.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. C. 1907; re-en. Sec. 4824, R.C.M. 1921; amd. Sec. 1, Ch. 117, L. 1923; re-en. Sec. 4824, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1961; R.C.M. 1947, 16-3201(part); amd. Sec. 13, Ch. 252, L. 1979; amd. Sec. 1, Ch. 145, L. 2003.

Cross-References

Classification of counties, 7-1-2111.

7-6-2402. Repealed. Sec. 2, Ch. 145, L. 2003.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 14, Ch. 252, L. 1979.

7-6-2403. Qualifications of county auditor. A person is not eligible to serve in the office of county auditor of any county unless the person is of voting age and has been a resident of the county for which the person is elected or appointed for at least 2 years preceding election or appointment.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 15, Ch. 252, L. 1979; amd. Sec. 481, Ch. 61, L. 2007.

7-6-2404. Oath of office. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R.C.M. 1921; re-en. Sec. 4826, R.C.M. 1935; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973; R.C.M. 1947, 16-3204.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

7-6-2405. Location of office. The county auditor shall keep the auditor's principal office at the county seat of the county for which elected or appointed.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part); amd. Sec. 482, Ch. 61, L. 2007.

7-6-2406. Compensation of auditor. The county auditor receives the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and may not receive other compensation or emolument for any service rendered or performed, except actual expenses for living and traveling whenever the duties of office require the auditor's presence at any place in the county other than the county seat, and then only after the travel has been ordered and advised by the board of county commissioners.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part); amd. Sec. 16, Ch. 252, L. 1979; amd. Sec. 483, Ch. 61, L. 2007.

Cross-References

Salaries of county officers, 7-4-2503.

7-6-2407. Examination and investigation of claims. (1) It is the duty of persons holding claims against any county having a county auditor to present the claims to the county auditor, who shall investigate and examine all claims presented.

(2) (a) Within 30 days of receipt of a claim in the office of the county auditor, the county auditor shall approve the claim, disapprove the claim, or notify the board of county commissioners, the claimant, and any affected county elected officials or department heads in writing that the claim requires further investigation.

(b) Further investigation of a claim must be completed and an approval or disapproval of payment of the claim must be issued within 60 days from the date that the county auditor provides the written notification required in subsection (2)(a).

(3) (a) The county auditor shall report approved claims to the board of county commissioners at its regular meeting after investigations into the claims have been completed.

(b) The county auditor shall keep a complete record of all claims submitted and investigations and examinations of the claims.

(4) In all counties having a county auditor:

(a) all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners must be investigated, examined, and inspected by the county auditor, who shall approve or disapprove payment of the claims before any warrant for the payment of the claims may be drawn;

(b) a claim against the county may not be paid or a warrant drawn for the claim unless the claim has the approval of the county auditor. If the county auditor disapproves payment of a claim:

(i) the auditor shall, within 5 days of the disapproval, provide written documentation to the board of county commissioners, the claimant, and any affected county elected officials or department heads specifying the reasons for the disapproval;

(ii) the auditor shall, within 15 days of the disapproval, present documentation and testimony in support of the disapproval of the claim to the board of county commissioners in a public hearing at a properly noticed and regularly scheduled meeting of the board of county commissioners; and

(iii) the board of county commissioners may order the payment of the claim by a majority vote at a regular board meeting. If a majority of the board orders payment of the disapproved claim, the county auditor may appeal the decision to the district court within 7 working days. If the board's decision is not appealed within the required 7-day period, the claim must be paid.

History: En. Sec. 7, p. 229, L. 1891; re-en. Sec. 4566, Pol. C. 1895; re-en. Sec. 3106, Rev. C. 1907; re-en. Sec. 4830, R.C.M. 1921; re-en. Sec. 4830, R.C.M. 1935; R.C.M. 1947, 16-3208; amd. Sec. 1, Ch. 371, L. 2003.

7-6-2408. Auditor's powers related to investigations. (1) The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices.

(2) The county auditors shall have power to issue process and compel the attendance of witnesses before them and examine any matter they may deem necessary. Any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: En. Sec. 5, p. 228, L. 1891; re-en. Sec. 4564, Pol. C. 1895; re-en. Sec. 3104, Rev. C. 1907; re-en. Sec. 4828, R.C.M. 1921; re-en. Sec. 4828, R.C.M. 1935; R.C.M. 1947, 16-3206.

Cross-References

Witnesses — subpoenas and pay, Title 26, ch. 2.

7-6-2409. Examination of county books and accounts. (1) It is the duty of the county auditor to examine the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, the clerk of the district court, and all other county and township officers within 15 days prior to the first regular session of the board of county commissioners in March, June, September, and December of each year unless a longer time is granted to the auditor by the board.

(2) The quarterly report shall contain a full and complete statement of the money received and disbursed by each of the officers since the last examination and report. For the purpose of this section, the county auditor has free access to all books and papers in each of the offices.

History: En. Sec. 9, p. 230, L. 1891; re-en. Sec. 4568, Pol. C. 1895; re-en. Sec. 3108, Rev. C. 1907; re-en. Sec. 4832, R.C.M. 1921; re-en. Sec. 4832, R.C.M. 1935; R.C.M. 1947, 16-3210; amd. Sec. 17, Ch. 252, L. 1979.

7-6-2410. Maintenance of records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in the auditor's office. Each county auditor, on leaving office, shall deliver over to the successor in office all documents, books, records, and property in the office belonging to the county.

History: En. Sec. 6, p. 229, L. 1891; re-en. Sec. 4565, Pol. C. 1895; re-en. Sec. 3105, Rev. C. 1907; re-en. Sec. 4829, R.C.M. 1921; re-en. Sec. 4829, R.C.M. 1935; R.C.M. 1947, 16-3207; amd. Sec. 484, Ch. 61, L. 2007.

Cross-References

Destruction of county records, 7-5-2132.

7-6-2411. List of claims allowed or rejected. The county clerk and recorder shall return to the county auditor, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected, either in whole or in part, by them. This list must be recorded by the auditor in a book kept for that purpose and carefully preserved in the auditor's office.

History: En. Sec. 8, p. 230, L. 1891; re-en. Sec. 4567, Pol. C. 1895; re-en. Sec. 3107, Rev. C. 1907; re-en. Sec. 4831, R.C.M. 1921; re-en. Sec. 4831, R.C.M. 1935; R.C.M. 1947, 16-3209; amd. Sec. 485, Ch. 61, L. 2007.

7-6-2412. Other duties of auditor. (1) Subject to the requirements of subsection (2), the county auditor shall perform other duties, clerical or otherwise, as directed by the county commissioners.

(2) A reasonable amount of time must be allowed the county auditor for the performance of the duties set forth in this part.

History: En. Sec. 11, p. 231, L. 1891; re-en. Sec. 4570, Pol. C. 1895; re-en. Sec. 3110, Rev. C. 1907; re-en. Sec. 4834, R.C.M. 1921; re-en. Sec. 4834, R.C.M. 1935; R.C.M. 1947, 16-3212; amd. Sec. 486, Ch. 61, L. 2007.

7-6-2413. Limitation on number of deputy county auditors. The whole number of deputies allowed to county auditors must not exceed one in counties of the first, second, and third classes.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

Cross-References

Authorization to exceed limitation on number of deputies, 7-4-2402.

7-6-2414 through 7-6-2420 reserved.

7-6-2421. Presentation of claims against county. (1) An account may not be allowed by the board unless the account is made out in separate items, with the nature of each item stated. If the claim is for official services for which specified fees are not fixed by law, the time actually and necessarily devoted to the services must be stated. An account may not be passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) Each claim against the county, except claims arising from injury to a person or property, that are limited under provisions of Title 2, chapter 9, parts 1 through 3, must be presented within 1 year after the last item accrued.

(3) A county officer may not, except for the officer's own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

History: Ap. p. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907; re-en. Sec. 4609, R.C.M. 1921; Cal. Pol. C. Sec. 4073; re-en. Sec. 4609, R.C.M. 1935; Sec. 16-1807, R.C.M. 1947; Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R.C.M. 1921; Cal. Pol. C. Sec. 4072; re-en. Sec. 4605, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1957; amd. Sec. 2, Ch. 234, L. 1977; Sec. 16-1802, R.C.M. 1947; Ap.p. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; Sec. 16-1801, R.C.M. 1947; Ap.p. Sec. 4366, Pol. C. 1895; re-en. Sec. 3002, Rev. C. 1907; re-en. Sec. 4766, R.C.M. 1921; Cal. Pol. C. Sec. 4160; re-en. Sec. 4766, R.C.M. 1935; Sec. 16-2617, R.C.M. 1947; R.C.M. 1947, 16-1801(part), 16-1802, 16-1807, 16-2617; amd. Sec. 1, Ch. 225, L. 1979; amd. Sec. 18, Ch. 252, L. 1979; amd. Sec. 3, Ch. 257, L. 2001.

7-6-2422. Opposition to claims. Any resident or taxpayer of the county may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; R.C.M. 1947, 16-1801(part); amd. Sec. 19, Ch. 252, L. 1979.

7-6-2423. Procedure for claims by county commissioners. All claims against the county presented by members of the board for per diem and mileage or other service rendered by them must be verified as other claims and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907; re-en. Sec. 4607, R.C.M. 1921; Cal. Pol. C. Sec. 4082; re-en. Sec. 4607, R.C.M. 1935; R.C.M. 1947, 16-1805.

7-6-2424. Appeal of decision concerning claim. (1) Whenever a claim against a county is disallowed in whole or in part or whenever a taxpayer or resident of the county is not satisfied with an allowance made by the board, the claimant, taxpayer, or resident may appeal from the decision of the board to the district court for the county. A written notice of appeal must be served on the clerk of the board within 30 days after the making of the decision or allowance, and a bond must be executed to the county, with surety to be approved by the clerk of the board, conditioned to prosecute the appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, shall immediately give notice to the county attorney and shall make out a return of the proceedings in the matter before the board, with its decision on the matter, and file the return, together with the bond and all the papers in the matter in the clerk's possession, with the clerk of the district court.

(3) The appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in the same manner.

History: (1)En. Sec. 25, p. 503, Bannack Stat.; re-en. Sec. 25, p. 437, Cod. Stat. 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Sec. 359, 5th Div. Rev. Stat. 1879; re-en. Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907; re-en. Sec. 4610, R.C.M. 1921; Cal. Pol. C. Sec. 4075; re-en. Sec. 4610, R.C.M. 1935; Sec. 16-1808, R.C.M. 1947; (2), (3)En. Sec. 26, p. 504, Bannack Stat.; re-en. Sec. 26, p. 437, Cod. Stat. 1871; re-en. Sec. 360, 5th Div. Rev. Stat. 1879; re-en. Sec. 765, 5th Div. Comp. Stat. 1887; amd. Sec. 4289, Pol. C. 1895; re-en. Sec. 2948, Rev. C. 1907; re-en. Sec. 4611, R.C.M. 1921; re-en. Sec. 4611, R.C.M. 1935; Sec. 16-1809, R.C.M. 1947; R.C.M. 1947, 16-1808, 16-1809; amd. Sec. 20, Ch. 252, L. 1979; amd. Sec. 487, Ch. 61, L. 2007.

Cross-References

Initiation of actions in District Court, Title 25, ch. 1, part 1; M.R.Civ.P. (see Title 25, ch. 20).
Appeals from Justices' Courts, 25-33-301, 25-33-302.
Surety bonds, Title 33, ch. 26.

7-6-2425. Auditing of county charges. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as prescribed in 7-6-2421, 7-6-2429, and 7-6-2430.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907; re-en. Sec. 4951, R.C.M. 1921; Cal. Pol. C. Sec. 4343; amd. Sec. 1, Ch. 19, L. 1935; re-en. Sec. 4951, R.C.M. 1935; R.C.M. 1947, 16-3801.

7-6-2426. Enumeration of county charges. (1) The following are county charges:

(a) charges incurred against the county by virtue of any provision of this title;

(b) all expenses necessarily incurred by the county attorney in criminal cases arising within the county, except as provided in subsection (2);

(c) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(d) the board of prisoners confined in jail;

(e) the accounts of the coroner of the county for services that are provided by law;

(f) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(g) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(h) the contingent expenses necessarily incurred for the use and benefit of the county;

(i) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

(2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid as provided in 53-30-110.

History: **En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; R.C.M. 1947, 16-3802(1); amd. Sec. 7, Ch. 680, L. 1985; amd. Sec. 22, Ch. 585, L. 2001; amd. Sec. 20, Ch. 449, L. 2005; amd. Sec. 1, Ch. 45, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 45 in (1)(b) at beginning deleted "one-half of the salary of the county attorney and". Amendment effective October 1, 2009.

Cross-References

Salary of County Attorney — one-half payable from county general fund, 7-4-2502.
Salary of County Attorney and Deputy County Attorney, 7-4-2503.
County levy for certain court expenses, 7-6-2511.
District Court budgets, 7-6-4022.
Imposition of charge upon conviction or forfeiture — use of money for salaries of city or town attorney and deputies and Deputy County Attorney, 46-18-236.

7-6-2427. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: **(1)En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; Sec. 16-3802, R.C.M. 1947; (2)En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907; re-en. Sec. 4953, R.C.M. 1921; Cal. Pol. C. Sec. 4345; re-en. Sec. 4953, R.C.M. 1935; Sec. 16-3803, R.C.M. 1947; R.C.M. 1947, 16-3802(2), 16-3803; amd. Sec. 8, Ch. 680, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 749, L. 1991; amd. Sec. 28, Ch. 546, L. 1995.**

7-6-2428. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: **En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907; re-en. Sec. 4954, R.C.M. 1921; Cal. Pol. C. Sec. 4346; re-en. Sec. 4954, R.C.M. 1935; R.C.M. 1947, 16-3804; amd. Sec. 21, Ch. 252, L. 1979.**

7-6-2429. Examination and allowance of officers' accounts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular monthly meeting of the board, to examine and allow the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county or appropriated by law or otherwise for its use and benefit.

History: **En. Subd. 11, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.10, R.C.M. 1935; R.C.M. 1947, 16-1013.**

7-6-2430. Accounts to be examined, settled, and allowed. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular meetings of the board, to examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasury therefor and provide for the issuing of the same.

History: **En. Subd. 12, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.11, R.C.M. 1935; R.C.M. 1947, 16-1014; amd. Sec. 22, Ch. 252, L. 1979.**

Part 25
County Taxation

Part Cross-References

Limitation on property taxes, Title 15, ch. 10, part 4.

7-6-2501. Authorization for county mill levy. Subject to 15-10-420, the board of county commissioners may levy a tax annually on the taxable property of the county for county public or governmental purposes that is necessary to defray current expenses and may levy taxes that are required to be levied by special or local statutes.

History: **En. Subd. 13, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.12, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973; amd. Sec. 1, Ch. 201, L. 1974; R.C.M. 1947, 16-1015; amd. Sec. 14, Ch. 584, L. 1999; amd. Sec. 23, Ch. 574, L. 2001; amd. Sec. 3, Ch. 453, L. 2005.**

Cross-References

Classification of counties, 7-1-2111.
Search and rescue units — mill levy, 7-32-235.

7-6-2502. Repealed. Sec. 61, Ch. 278, L. 2001.

History: **En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907; re-en. Sec. 2150, R.C.M. 1921; Cal. Pol. C. Sec. 3714; re-en. Sec. 2150, R.C.M. 1935; R.C.M. 1947, 84-3805; amd. Sec. 15, Ch. 584, L. 1999.**

7-6-2503. Duties of county treasurer related to taxation. The treasurer is collector of taxes. The county treasurer's duties as collector of taxes are prescribed in this title and Title 15.

History: **Ap. p. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907; re-en. Sec. 4727, R.C.M. 1921; Cal. Pol. C. Sec. 4105; re-en. Sec. 4727, R.C.M. 1935; Sec. 16-2405, R.C.M. 1947; Ap. p. Sec. 4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907; re-en. Sec. 4772, R.C.M. 1921; re-en. Sec. 4772, R.C.M. 1935; Sec. 16-2626, R.C.M. 1947; R.C.M. 1947, 16-2405(part), 16-2626.**

7-6-2504. Duties of county clerk related to taxation. The clerk of the board must record all orders levying taxes.

History: **En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; R.C.M. 1947, 16-908(8).**

7-6-2505 through 7-6-2510 reserved.

7-6-2511. County levy for certain court expenses. (1) Subject to 15-10-420, the governing body of each county may each year levy and collect a tax on the taxable property of the county for certain county district court costs, as provided in subsection (2).

(2) District court costs for which a tax may be levied under subsection (1) are the:

(a) costs of the office of the clerk of district court;

(b) costs of providing office, courtroom, and other space for district court operations under 3-1-125; and

(c) contracted costs of supplementing a district court budget, as provided in 3-1-126, if incurred in the discretion of the county commissioners.

(3) Costs of the office of the clerk of district court include but are not limited to salary and benefits for clerks of district court, deputy clerks of district court, and other employees of the office of the clerk of district court and expenses of the office.

(4) If remaining funds are available after paying the costs provided for in subsection (2), the county commissioners, in their discretion, may use the remaining funds to pay the expenses of the office of county attorney.

(5) This section may not be construed as a limitation on the authority or ability of a county or district court to apply for, receive, or administer grants from state, federal, or private funds.

History: **En. Sec. 1, Ch. 692, L. 1979; amd. Sec. 2, Ch. 254, L. 1983; amd. Sec. 16, Ch. 584, L. 1999; amd. Sec. 24, Ch. 574, L. 2001; amd. Sec. 23, Ch. 585, L. 2001.**

Cross-References

Classification of counties, 7-1-2111.

Salary of County Attorney — one-half payable from county general fund, 7-4-2502.

Salary of County Attorney and Deputy County Attorney, 7-4-2503.

Enumeration of county charges — one-half salary of County Attorney, 7-6-2426.

District Court budgets, 7-6-4022.

Imposition of charge upon conviction or forfeiture — use of money for salaries of city or town attorney and deputies and Deputy County Attorney, 46-18-236.

7-6-2512. County tax levy for health care facilities. (1) Subject to 15-10-420, the board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414.

History: En. Sec. 1, Ch. 625, L. 1983; amd. Sec. 2, Ch. 561, L. 1993; amd. Sec. 1, Ch. 520, L. 1995; amd. Sec. 17, Ch. 584, L. 1999; amd. Sec. 4, Ch. 495, L. 2001; amd. Sec. 1, Ch. 571, L. 2001; amd. Sec. 25, Ch. 574, L. 2001.

7-6-2513. County public safety levy — purpose. Subject to 15-10-420, the board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax on all property within the county for the purpose of providing for the public safety of citizens. The tax must be used to support county law enforcement services and to maintain county detention centers. Money received from the tax must be placed in a special account to be used for the purposes of this section.

History: En. Sec. 1, Ch. 318, L. 1993; amd. Sec. 1, Ch. 390, L. 1995; amd. Sec. 18, Ch. 584, L. 1999.

7-6-2514. Repealed. Sec. 171, Ch. 584, L. 1999.

History: En. Sec. 2, Ch. 318, L. 1993; amd. Sec. 1, Ch. 463, L. 1997.

7-6-2515 through 7-6-2520 reserved.

7-6-2521. All-purpose levy authorized for counties. A county may at its option levy an all-purpose levy as provided in 7-6-2522 and 7-6-2524.

History: En. Sec. 1, Ch. 291, L. 1987; amd. Sec. 49, Ch. 278, L. 2001; amd. Sec. 4, Ch. 453, L. 2005.

7-6-2522. All-purpose levy. Subject to 15-10-420, the all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county public or governmental purposes.

History: En. Sec. 2, Ch. 291, L. 1987; amd. Sec. 19, Ch. 584, L. 1999; amd. Sec. 1, Ch. 26, L. 2001; amd. Sec. 1, Ch. 419, L. 2001; amd. Sec. 26, Ch. 574, L. 2001; amd. Sec. 5, Ch. 453, L. 2005.

7-6-2523. Repealed. Sec. 21, Ch. 453, L. 2005.

History: En. Sec. 3, Ch. 291, L. 1987; amd. Sec. 3, Ch. 561, L. 1993; amd. Sec. 2, Ch. 571, L. 2001; amd. Sec. 27, Ch. 574, L. 2001.

7-6-2524. Changes from all-purpose levy. A county adopting the all-purpose levy provided for in 7-6-2521 and 7-6-2522 is bound by that adoption during the ensuing fiscal year but may abandon the method in succeeding fiscal years.

History: En. Sec. 4, Ch. 291, L. 1987; amd. Sec. 50, Ch. 278, L. 2001; amd. Sec. 6, Ch. 453, L. 2005.

7-6-2525. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 5, Ch. 291, L. 1987; amd. Sec. 31, Ch. 430, L. 1995.

7-6-2526. Repealed. Sec. 21, Ch. 453, L. 2005.

History: En. Sec. 6, Ch. 291, L. 1987.

7-6-2527. Taxation — public and governmental purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

(1) district court purposes as provided in 7-6-2511;

(2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;

(3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;

(4) multijurisdictional service purposes as provided in 7-11-1022;

(5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;

(6) support for a port authority as provided in 7-14-1132;

(7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;

(8) recreational, educational, and other activities of the elderly as provided in 7-16-101;

(9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102 and 7-16-2109;

(10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;

(11) support for a museum, facility for the arts and the humanities, collection of exhibits, or a museum district created under provisions of Title 7, chapter 11, part 10, or former Title 7, chapter 16, part 22;

(12) extension work in agriculture and home economics as provided in 7-21-3203;

(13) weed control and management purposes as provided in 7-22-2142;
(14) insect control programs as provided in 7-22-2306;
(15) fire control as provided in 7-33-2209;
(16) ambulance service as provided in 7-34-102;
(17) public health purposes as provided in 50-2-111 and 50-2-114;
(18) public assistance purposes as provided in 53-3-115;
(19) indigent assistance purposes as provided in 53-3-116;
(20) developmental disabilities facilities as provided in 53-20-208;
(21) mental health services as provided in 53-21-1010;
(22) airport purposes as provided in 67-10-402 and 67-11-302;
(23) purebred livestock shows and sales as provided in 81-8-504;
(24) economic development purposes as provided in 90-5-112;
(25) prevention programs, including programs that reduce substance abuse; and
(26) forest or grassland hazardous fuels reduction projects in areas near homes and communities where wildland fire is a threat.

History: En. Sec. 7, Ch. 453, L. 2005; amd. Sec. 3, Ch. 317, L. 2005; amd. Sec. 10, Ch. 505, L. 2007; amd. Sec. 1, Ch. 38, L. 2009; amd. Sec. 24, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 38 inserted (26) concerning forest or grassland hazardous fuels reduction projects; and made minor changes in style. Amendment effective March 20, 2009.

Chapter 286 in (4) at end substituted "7-11-1022" for "7-11-1106"; in (9) at end deleted "and 7-21-3410"; in (11) near end after "district" substituted "created under provisions of Title 7, chapter 11, part 10 or former Title 7, chapter 16, part 22" for "as provided in 7-16-2205"; and made minor changes in style. Amendment effective July 1, 2009.

7-6-2528 through 7-6-2530 reserved.

7-6-2531. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 1, Ch. 613, L. 1979; amd. Sec. 1, Ch. 215, L. 1995; amd. Sec. 34, Ch. 42, L. 1997.

7-6-2532. Repealed. Sec. 34, Ch. 495, L. 2001; sec. 253, Ch. 574, L. 2001.

History: En. Sec. 2, Ch. 613, L. 1979.

7-6-2533. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 3, Ch. 613, L. 1979.

7-6-2534. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 4, Ch. 613, L. 1979.

7-6-2535. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 5, Ch. 613, L. 1979.

7-6-2536. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 6, Ch. 613, L. 1979.

7-6-2537. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 7, Ch. 613, L. 1979.

7-6-2538 and 7-6-2539 reserved.

7-6-2540. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 11, Ch. 680, L. 1991.

7-6-2541. County detention center inmate medical costs. The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in 7-32-2222.

History: En. Sec. 1, Ch. 500, L. 1999; amd. Sec. 28, Ch. 574, L. 2001.

Part 26
County Warrants

7-6-2601. Details related to county warrants — payments to state — definition. (1) Warrants issued pursuant to 7-6-2202(1) must be signed by the county clerk and the presiding officer of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each warrant, the name of the person to whom it is payable, and the purpose for which it is drawn must be stated on the warrant. Warrants must, at the time they are issued, be registered by the county clerk.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

(4) All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the county has the technology to conduct electronic funds transfers.

(5) For the purposes of this part, "warrant" includes a check and an electronic funds transfer.

History: (1)En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; (2)En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R.C.M. 1921; Cal. Pol. C. Sec. 4219; re-en. Sec. 4812, R.C.M. 1935; Sec. 16-2918, R.C.M. 1947; (3)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; R.C.M. 1947, 16-1810(part), 16-2917(part), 16-2918; amd. Sec. 23, Ch. 252, L. 1979; amd. Sec. 51, Ch. 278, L. 2001; amd. Sec. 1, Ch. 432, L. 2005.

7-6-2602. Payment of warrants. The county treasurer may not pay any order or warrant except to the payee of the warrant or to the payee's agent, assignee, or legal representative, whose authority must be in writing and delivered to the county treasurer. The written authority must be returned with the order or warrant, when paid, to the board of county commissioners.

History: Ap. p. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R.C.M. 1921; Cal. Pol. C. Sec. 4147; re-en. Sec. 4752, R.C.M. 1935; Sec. 16-2603, R.C.M. 1947; Ap. p. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2603, 16-2608(part); amd. Sec. 52, Ch. 278, L. 2001.

7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay a warrant, it must be registered and paid in the order of its registration.

(2) The county treasurer may not register any county order or warrant in the name of any person other than the payee except at the request of the payee or the payee's agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing.

History: (1)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2608(part); amd. Sec. 488, Ch. 61, L. 2007.

7-6-2604. Interest on unpaid warrants. (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the warrant is not paid for lack of funds, the treasurer shall endorse on the warrant "Not paid for lack of funds", include the date of presentation, and sign the warrant. When the treasurer pays a warrant on which any interest is due, the treasurer shall note on the warrant the amount of interest paid and enter on the treasurer's account the amount of interest, distinct from the principal.

(2) After the date of presentation and endorsement by the treasurer, the warrant must bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and endorsed "Not paid for lack of funds in the treasury", after the date of presentation and endorsement, must draw interest at the rate fixed by the board of county commissioners in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; Cal. Pol. C. Sec. 4148; re-en. Sec. 4753, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971; Sec. 16-2604, R.C.M. 1947; Ap. p. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R.C.M. 1921; Cal. Pol. C. Sec. 4153; re-en. Sec. 4759, R.C.M. 1935; Sec. 16-2610, R.C.M. 1947; Ap. p. Sec. 1, Ch. 86, L. 1923; re-en Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939;

amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; Sec. 16-2002, R.C.M. 1947; R.C.M. 1947, 16-2002, 16-2604, 16-2610; amd. Sec. 33, Ch. 575, L. 1981; amd. Sec. 489, Ch. 61, L. 2007.

Cross-References

Rate of interest payable on warrants, 17-5-102.

7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer shall give notice as provided in 7-1-2121 that the warrants are able to be paid.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer may not publish the warrants in detail but shall give notice only that county warrants presented for payment prior to a date stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer shall designate the payable warrants in the advertisement.

(3) The warrants cease to draw interest from the first publication or posting of the notice.

(4) (a) If the warrants are not re-presented for payment within 60 days from the time the notice is given, the fund set aside for the payment of the warrants must be applied by the treasurer to the payment of unpaid warrants in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay the warrants out of any money in the treasury that is not otherwise appropriated.

History: (1), (3)En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990 Rev. C. 1907; re-en. Sec. 4754, R.C.M. 1921; Cal. Pol. C. Sec. 4149; re-en. Sec. 4754, R.C.M. 1935; Sec. 16-2605, R.C.M. 1947; (2)En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R.C.M. 1921; Cal. Pol. C. Sec. 4150; re-en. Sec. 4755, R.C.M. 1935; Sec. 16-2606, R.C.M. 1947; (4)En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R.C.M. 1921; Cal. Pol. C. Sec. 4152; re-en. Sec. 4758, R.C.M. 1935; Sec. 16-2609, R.C.M. 1947; R.C.M. 1947, 16-2605, 16-2606, 16-2609; amd. Sec. 9, Ch. 349, L. 1985; amd. Sec. 490, Ch. 61, L. 2007.

7-6-2606. Order of redemption of warrants. (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to the warrants according to the priority of time in which they were presented. The time of presenting the warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, the treasurer shall set apart the the money or as much of the money as is necessary for the payment of the warrants.

History: En. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R.C.M. 1921; Cal. Pol. C. Sec. 4151; re-en. Sec. 4756, R.C.M. 1935; R.C.M. 1947, 16-2607; amd. Sec. 491, Ch. 61, L. 2007.

7-6-2607. Processing of warrants. (1) The board shall cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office. The uncalled warrants must be canceled in the same manner as other county warrants. At the same time, the county treasurer shall deliver to the board all warrants or vouchers that are in the county treasurer's possession for money disbursed by the county treasurer and the clerk shall issue a receipt for the warrants or vouchers.

(2) The board shall cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and shall make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the warrant was payable. The board shall cause the list to be entered on the minutes of the board.

History: En. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R.C.M. 1921; re-en. Sec. 4613, R.C.M. 1935; R.C.M. 1947, 16-1811; amd. Sec. 24, Ch. 252, L. 1979; amd. Sec. 53, Ch. 278, L. 2001.

Part 27
Investment of County Money

Part Cross-References

Deposit of public money in financial institutions, 7-6-201.

Unified investment fund, Title 17, ch. 6, part 2.

7-6-2701. Investment of certain money in county, municipal, hospital, and school warrants. (1) If a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, hospital district, or school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase the warrants of entities located in the same county.

(2) For the purchases, the county commissioners shall:

(a) designate the fund or funds to be invested;

(b) fix the amount that may be purchased;

(c) establish the rate of interest the county must receive for the investment; and

(d) designate the warrants that are to be purchased by the funds.

(3) The officer drawing a warrant to be purchased for investment by a county shall attach to or stamp, write, or print upon the warrant a notice to the effect that the county will exercise its preference right to purchase the warrant.

(4) (a) A school district, hospital district, or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district, hospital district, or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when a warrant designated for purchase under the provisions of subsection (2) is presented to the treasurer, purchase the warrant out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder or the applicable officer authorized to draw the warrants.

(6) Interest earned from the investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, must be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) A provision of this section may not be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part); amd. Sec. 1, Ch. 92, L. 1985; amd. Sec. 1, Ch. 349, L. 1991; amd. Sec. 1, Ch. 219, L. 1997.

7-6-2702. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. 16-1189 by Sec. 4, Ch. 54, L. 1975; R.C.M. 1947, 16-1189.

Part 28
Management of School Money

Part Cross-References

School finance, Title 20, ch. 9.

7-6-2801. Management of school funds. The county treasurer shall:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts that are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform the superintendent of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever the warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in a form required by the superintendent.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(6) thru (9); amd. Sec. 25, Ch. 252, L. 1979; amd. Sec. 492, Ch. 61, L. 2007.

7-6-2802. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(2), (3).

Parts 29 through 39 reserved

Part 40
Local Government Budget Act

7-6-4001. Short title — applicability. (1) This part may be referred to as the "Local Government Budget Act".

(2) This part applies to all local governments.

History: En. Sec. 9, Ch. 278, L. 2001.

7-6-4002. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Governing body" means the elected body responsible for the administration of a local government.

(2) "Local government" has the meaning provided in 7-6-602.

(3) "Municipality" means an incorporated city or town.

(4) "Working capital" means the current assets of a fund minus the current liabilities and designated reserves of a fund.

History: En. Sec. 10, Ch. 278, L. 2001.

7-6-4003. Budget and levies supplied to department of administration. (1) A local government shall submit a complete copy of the final budget together with a statement of tax levies to the department of administration by the later of October 1 or 60 days after receipt of taxable values from the department of revenue. The county clerk and recorder shall make this submission for counties.

(2) The local government shall use standard forms prescribed by the department of administration or may use an alternative budget format acceptable to the department of administration.

History: En. Sec. 11, Ch. 278, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001.

7-6-4004. Budget fund structure. Local government budgets must conform to the fund structure prescribed by the department of administration.

History: En. Sec. 12, Ch. 278, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001.

7-6-4005. Expenditures limited to appropriations. (1) Local government officials may not make a disbursement or an expenditure or incur an obligation in excess of the total appropriations for a fund.

(2) A local government official who violates subsection (1) is liable for the amount of the excess disbursement, expenditure, or obligation personally.

(3) The subsequent claims approval process may not be considered as the making of a disbursement or an expenditure or as incurring an obligation and does not otherwise limit or mitigate the local government official's personal liability.

History: En. Sec. 13, Ch. 278, L. 2001; amd. Sec. 6, Ch. 209, L. 2005.

7-6-4006. Appropriation power — requirements. (1) A governing body may appropriate money and provide for the payment of the debts and expenses of the local government.

(2) Money may not be disbursed, expended, or obligated except pursuant to an appropriation for which working capital is or will be available.

(3) Appropriations may be adjusted according to procedures authorized by the governing body for:

(a) debt service funds for obligations related to debt approved by the governing body;

(b) trust funds for obligations authorized by trust covenants;

(c) any fund for federal, state, local, or private grants and shared revenue accepted and approved by the governing body;

(d) any fund for special assessments approved by the governing body;

(e) the proceeds from the sale of land;

(f) any fund for gifts or donations; and

(g) money borrowed during the fiscal year.

(4) The governing body may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings. Budget amendments providing for additional appropriations must identify the fund reserves, unanticipated revenue, or previously unbudgeted revenue that will fund the appropriations.

History: En. Sec. 14, Ch. 278, L. 2001.

7-6-4007 through 7-6-4010 reserved.

7-6-4011. Use of bond proceeds and borrowed money. (1) Except as otherwise provided by law, money borrowed by a local government may be used only for the purpose for which the money was borrowed. Unless restricted by law, surplus borrowed money may be used to redeem the debt for which the money was borrowed.

(2) The authorization of bonds by the electors or the governing body constitutes the appropriation of the bond proceeds for the purpose for which the bonds are authorized.

History: En. Sec. 15, Ch. 278, L. 2001.

7-6-4012. Fee based budgets — adjustable appropriation. (1) In its final budget resolution, the governing body may authorize adjustments to appropriations funded by fees throughout the budget period. Adjustable appropriations are:

(a) proprietary fund appropriations; or

(b) other appropriations specifically identified in the local government's final budget resolution as fee-based appropriations.

(2) Adjustments of fee-based appropriations must be:

(a) based upon the cost of providing the services supported by the fee; and

(b) fully funded by the related fees for services, fund reserves, or nonfee revenue such as interest.

History: En. Sec. 16, Ch. 278, L. 2001.

7-6-4013. Fees for services — hearing and resolution. (1) If a local government has the authority to regulate, establish, and change fees, rates, charges, and classifications that are imposed for services to its inhabitants and other persons served by the local government, the fees, rates, charges, and classifications must be reasonable and related to the cost of providing the service.

(2) Charges for services must comply with Title 17, chapter 2, part 3, and other applicable statutes.

(3) In order to establish or change fees, rates, charges, or classifications imposed for services, the governing body shall order a hearing to be held as provided in 7-1-4131, unless a special hearing process is provided by law. Municipal utility rate hearings must be held as provided in 69-7-112.

(4) Notice of a hearing must be published as provided in 7-1-2121 for a county and as provided in 7-1-4127 for a municipality.

(5) After a hearing, the fees, rates, charges, or classifications must be established by resolution of the governing body.

History: En. Sec. 17, Ch. 278, L. 2001.

7-6-4014. Restriction on tax-financed expenditures if voter approval required. If an expenditure is to be financed from a tax levy required to be authorized and approved at an election, the expenditure may not be made or an obligation may not be incurred against the expenditure until the tax levy is authorized and approved.

History: En. Sec. 18, Ch. 278, L. 2001.

7-6-4015. Payments for judgments. (1) Judgments against a local government that are not covered by insurance may be paid:

(a) from the general fund; or

(b) from the fund or funds supporting the local government operation that incurred the judgment.

(2) Judgments that are to be paid from the general fund:

(a) must be paid in the current fiscal year if there is sufficient money in the general fund to pay both the judgment and the general fund appropriations for the current fiscal year; or

(b) must be paid from additional tax levies made in each of the next 3 years if general fund money is insufficient to pay the judgment in the current fiscal year.

History: En. Sec. 19, Ch. 278, L. 2001.

7-6-4016 through 7-6-4019 reserved.

7-6-4020. Preliminary annual operating budget. (1) A preliminary annual operating budget must be prepared for the local government.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials.

(3) (a) Before June 1 of each year, the county clerk and recorder shall notify the county commission and each board, office, regional resource authority, or official that they are required to file preliminary budget proposals for their component of the total county budget.

(b) Component budgets must be submitted to the clerk and recorder before June 10th or on a date designated by the county commission and must be submitted on forms provided by the county clerk and recorder.

(c) The county clerk and recorder shall prepare and submit the county's preliminary annual operating budget.

(d) Component budget responsibilities as provided in this subsection (3) include but are not limited to the following:

(i) The county surveyor or any special engineer shall compute road and bridge component budgets and submit them to the county commission.

(ii) The county commission shall submit road and bridge component budgets.

(iii) The county treasurer shall submit debt service component budgets.

(iv) The county commission shall submit component budgets for construction or improvements to be made from new general obligation debt.

(4) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior budget year, current budget year, and proposed budget year;

(b) a listing of all expenditures for the prior budget year, the current budget year, and the proposed budget year. All expenditures must be classified under one of the following categories:

(i) salaries and wages;

(ii) operations and maintenance;

(iii) capital outlay;

(iv) debt service; or

(v) transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior budget year, current budget year, and proposed budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the local government. The listing of positions, salaries, and benefits is not required to be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(5) The preliminary annual operating budget for each fund for which the local government will levy an ad valorem property tax must include the estimated amount to be raised by the tax.

History: En. Sec. 20, Ch. 278, L. 2001; amd. Sec. 25, Ch. 351, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 351 in (3)(a) near middle inserted "regional resource authority"; and made minor changes in style. Amendment effective April 24, 2009.

7-6-4021. Notice of preliminary or amended budget. (1) The governing body shall cause a notice of a public hearing on the preliminary or amended budget to be published. The notice must:

(a) provide that the governing body has completed its preliminary annual budget for the ensuing fiscal year or intends to amend its annual budget;

(b) state that the budget or budget amendment has been placed on file and is open to inspection in the county or municipal office designated in the notice;

(c) designate the date, time, and place of the meeting at which the governing body will meet for approving a final budget or amended budget and making appropriations; and

(d) state that any taxpayer or resident may appear at the meeting and be heard for or against any part of the proposed budget or budget amendment.

(2) The publication requirements must conform to the provisions of 7-1-2121 for a county or 7-1-4127 for a municipality.

History: En. Sec. 21, Ch. 278, L. 2001.

7-6-4022. District court budgets. (1) The district court must be provided with copies of the preliminary district court fund budget as soon as the preliminary county budget is prepared pursuant to 7-6-4020.

(2) The district court may recommend changes to any part of the district court fund budget that the court considers to be necessary for it to discharge its obligations under the law. Any recommendations must be made at the hearing on the preliminary budget held pursuant to 7-6-4024.

(3) The district court fund may be used only for district court operations and expenses.

History: En. Sec. 22, Ch. 278, L. 2001.

Cross-References

Salary of County Attorney — one-half payable from county general fund, 7-4-2502.

Salary of County Attorney and Deputy County Attorney, 7-4-2503.

Enumeration of county charges — one-half salary of County Attorney, 7-6-2426.

County levy for certain court expenses, 7-6-2511.

Imposition of charge upon conviction or forfeiture — use of money for salaries of city or town attorney and deputies and Deputy County Attorney, 46-18-236.

7-6-4023. Repealed. Sec. 74, Ch. 449, L. 2005; Sec. 21, Ch. 453, L. 2005.

History: En. Sec. 23, Ch. 278, L. 2001.

7-6-4024. Hearing on preliminary budget. (1) The governing body shall hold a hearing in accordance with the notice given pursuant to 7-6-4021.

(2) Local government officials shall attend the budget hearing to answer questions on their proposed budgets if called upon:

(a) by the governing body; or

(b) by a taxpayer or resident.

(3) The hearing may be continued from day to day and must be concluded and the budget finally approved and adopted by resolution by the later of the second Monday in August or within 45 calendar days of receiving certified taxable values from the department of revenue.

History: En. Sec. 24, Ch. 278, L. 2001.

7-6-4025. Receipt and expenditure of money prior to adoption of final budget. A local government may receive and expend money between July 1 of the fiscal year and the date the final budget resolution is adopted.

History: En. Sec. 25, Ch. 278, L. 2001.

7-6-4026 through 7-6-4029 reserved.

7-6-4030. Final budget — resolution — appropriations. (1) The governing body may amend the preliminary budget after the public hearing and after considering any public comment.

(2) The amended budget constitutes the final budget. The final budget must be balanced so that appropriations do not exceed the projected beginning balance plus the estimated revenue of each fund for the fiscal year.

(3) The governing body shall adopt the final budget by resolution. The resolution must:

(a) authorize appropriations to defray the expenses or liabilities for the fiscal year; and

(b) establish legal spending limits at the level of detail in the resolution.

(4) The effective date of the resolution is July 1 of the fiscal year, even if the resolution is adopted after that date.

History: **En. Sec. 26, Ch. 278, L. 2001.**

7-6-4031. Budget amendment procedures. (1) The final budget resolution may authorize the governing body or a designated official to transfer appropriations between items within the same fund.

(2) The annual budget appropriations may be amended as provided in 7-6-4006(3) and 7-6-4012.

(3) Except as provided in 7-6-4006, 7-6-4011, 7-6-4012, 7-6-4015, and 7-6-4032 or in the case of an emergency under Title 10, chapter 3, a public hearing is required for an overall increase in appropriation authority.

History: **En. Sec. 27, Ch. 278, L. 2001.**

7-6-4032. Emergency expenditures. (1) Emergency budget appropriations must be adopted by two-thirds of the members of a governing body who are present at a meeting.

(2) Emergency expenditures are limited to and must be charged to the adopted emergency budget appropriations.

(3) The governing body may submit the question of funding emergency warrants at an election as provided by law.

History: **En. Sec. 28, Ch. 278, L. 2001.**

7-6-4033. Expenditure limitation. Except as provided in 7-6-4006, 7-6-4011, 7-6-4012, 7-6-4015, and 7-6-4032, the governing body, each county or municipal official, and the district courts are limited to the amount of appropriations and by the classifications in the annual appropriation resolution provided for in 7-6-4030 when making disbursements or expenditures or incurring liabilities.

History: **En. Sec. 29, Ch. 278, L. 2001.**

7-6-4034. Determination of fund requirements — property tax levy. (1) After determining the final budget, the governing body shall determine the property tax levy needed for each fund by:

(a) adding the total amount of the appropriations and authorized expenditures for the budget year;

(b) adding an additional amount, subject to the provisions of subsection (2), as a reserve to meet expenditures made from the fund during the months of July to November of the next fiscal year;

(c) subtracting the working capital; and

(d) subtracting the total estimated revenue, other than the property tax levy, for the budget year.

(2) After deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants, the amount that may be added as a reserve, as provided in subsection (1)(b), to:

(a) a county's fund may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year; and

(b) a city's or town's fund may not exceed one-half of the total amount appropriated and authorized to be spent from the fund during the current fiscal year.

History: **En. Sec. 30, Ch. 278, L. 2001.**

7-6-4035. Tax levies for boards and commissions — bond exemption. (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt or for the operations of a regional resource authority are not subject to approval by the governing body.

(3) Except for judgment levies under 2-9-316 or 7-6-4015, all tax levies are subject to 15-10-420.

History: **En. Sec. 31, Ch. 278, L. 2001; amd. Sec. 26, Ch. 351, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 351 in (2) near end inserted "or for the operations of a regional resource authority". Amendment effective April 24, 2009.

7-6-4036. Fixing tax levy. (1) The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality:

(a) by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values;

(b) after the approval and adoption of the final budget; and

(c) at levels that will balance the budgets as provided in 7-6-4034.

(2) Each levy:

(a) must be made in the manner provided by 15-10-201; and

(b) except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420.

History: En. Sec. 32, Ch. 278, L. 2001.

Part 41
General Provisions Related to Municipalities
(Repealed)

7-6-4101. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907; re-en. Sec. 5217, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1927; re-en. Sec. 5217, R.C.M. 1935; R.C.M. 1947, 84-4730; amd. Sec. 26, Ch. 252, L. 1979.

7-6-4102. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Subd. 76, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.75, R.C.M. 1935; R.C.M. 1947, 11-978.

7-6-4103. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1927; re-en. Sec. 5218, R.C.M. 1935; R.C.M. 1947, 84-4731; amd. Sec. 32, Ch. 430, L. 1995.

7-6-4104. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 33, Ch. 430, L. 1995; amd. Sec. 2, Ch. 458, L. 1997.

7-6-4105. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 1, Ch. 26, L. 1983; amd. Sec. 34, Ch. 430, L. 1995.

7-6-4106. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 35, Ch. 430, L. 1995.

7-6-4107. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part); amd. Sec. 36, Ch. 430, L. 1995.

7-6-4108. Repealed. Sec. 29, Ch. 458, L. 1997.

History: (1)En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; (2)En. 11-805.2 by Sec. 5, Ch. 146, L. 1974; Sec. 11-805.2, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-805.2; amd. Sec. 37, Ch. 430, L. 1995.

7-6-4109. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 2, Ch. 26, L. 1983; amd. Sec. 38, Ch. 430, L. 1995.

7-6-4110. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 39, Ch. 430, L. 1995.

7-6-4111. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 44, L. 1987; amd. Sec. 40, Ch. 430, L. 1995.

7-6-4112. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part); amd. Sec. 41, Ch. 430, L. 1995.

7-6-4113. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(3), (4); amd. Sec. 27, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 222, L. 1989; amd. Sec. 21, Ch. 489, L. 1991; amd. Sec. 7, Ch. 179, L. 1995; amd. Sec. 42, Ch. 430, L. 1995.

7-6-4114 through 7-6-4118 reserved.

7-6-4119. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 2, Ch. 204, L. 1993; amd. Sec. 43, Ch. 430, L. 1995.

7-6-4120. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 1, Ch. 32, L. 1989.

7-6-4121. Repealed. Sec. 61, Ch. 278, L. 2001.

History: (1)En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; Sec. 11-1301, R.C.M. 1947; (2)En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; Sec. 11-1302, R.C.M. 1947; R.C.M. 1947, 11-1301(part), 11-1302(part); amd. Sec. 28, Ch. 252, L. 1979; amd. Sec. 41, Ch. 614, L. 1981; amd. Sec. 44, Ch. 430, L. 1995; amd. Sec. 5, Ch. 458, L. 1997.

7-6-4122. Repealed. Sec. 29, Ch. 458, L. 1997.

History: Ap. p. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907; re-en. Sec. 5084, R.C.M. 1921; Cal. Pol. C. Sec. 4455; re-en. Sec. 5084, R.C.M. 1935; Sec. 11-1501, R.C.M. 1947; Ap. p. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907; re-en. Sec. 5085, R.C.M. 1921, re-en. Sec. 5085, R.C.M. 1935; Sec. 11-1502, R.C.M. 1947; R.C.M. 1947, 11-1501, 11-1502.

7-6-4123. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5035, R.C.M. 1921; re-en. Sec. 5035, R.C.M. 1935; R.C.M. 1947, 11-808; amd. Sec. 6, Ch. 458, L. 1997.

7-6-4124. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 57, L. 1939; R.C.M. 1947, 11-809; amd. Sec. 45, Ch. 430, L. 1995; amd. Sec. 7, Ch. 458, L. 1997.

7-6-4125 through 7-6-4130 reserved.

7-6-4131. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971; amd. Sec. 6, Ch. 287, L. 1974; R.C.M. 1947, 84-4701.3; amd. Sec. 46, Ch. 430, L. 1995.

7-6-4132. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part); amd. Sec. 47, Ch. 430, L. 1995.

7-6-4133. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 1, Ch. 131, L. 1973; R.C.M. 1947, 11-1414; amd. Sec. 48, Ch. 430, L. 1995.

7-6-4134. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(2); amd. Sec. 8, Ch. 458, L. 1997.

7-6-4135. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(3); amd. Sec. 6, Ch. 421, L. 1985; amd. Sec. 12, Ch. 10, L. 1993; amd. Sec. 9, Ch. 458, L. 1997.

7-6-4136 through 7-6-4139 reserved.

7-6-4140. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 3, Ch. 458, L. 1997.

7-6-4141. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 4, Ch. 458, L. 1997.

Part 42
Municipal Budget Law
(Repealed)

7-6-4201. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part).

7-6-4202. Repealed. Sec. 61, Ch. 278, L. 2001.

History: (1) thru (3)En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; Sec. 11-1401, R.C.M. 1947; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 11-1401(part); amd. Sec. 9, Ch. 16, L. 1991; amd. Sec. 10, Ch. 458, L. 1997.

7-6-4203. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part); amd. Sec. 49, Ch. 430, L. 1995.

7-6-4204. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 11, Ch. 121, L. 1931; re-en. Sec. 5083.11, R.C.M. 1935; R.C.M. 1947, 11-1412.

7-6-4205. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 2, Ch. 121, L. 1931; re-en. Sec. 5083.2, R.C.M. 1935; R.C.M. 1947, 11-1411; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 50, Ch. 430, L. 1995; amd. Sec. 11, Ch. 458, L. 1997.

7-6-4206. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 12, Ch. 121, L. 1931; re-en. Sec. 5083.12, R.C.M. 1935; R.C.M. 1947, 11-1413.

7-6-4207. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 12, Ch. 458, L. 1997.

7-6-4208. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 13, Ch. 458, L. 1997.

7-6-4209. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 14, Ch. 458, L. 1997.

7-6-4210 through 7-6-4220 reserved.

7-6-4221. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 51, Ch. 430, L. 1995.

7-6-4222. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 2, Ch. 212, L. 1983.

7-6-4223. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 52, Ch. 430, L. 1995.

7-6-4224. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(1), (4); amd. Sec. 53, Ch. 430, L. 1995.

7-6-4225. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(2), (3); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 54, Ch. 430, L. 1995.

7-6-4226. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part); amd. Sec. 55, Ch. 430, L. 1995.

7-6-4227. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part); amd. Sec. 29, Ch. 252, L. 1979; amd. Sec. 4, Ch. 84, L. 1989; amd. Sec. 56, Ch. 430, L. 1995.

7-6-4228. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(1); amd. Sec. 30, Ch. 252, L. 1979; amd. Sec. 5, Ch. 84, L. 1989; amd. Sec. 57, Ch. 430, L. 1995.

7-6-4229. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(2); amd. Sec. 58, Ch. 430, L. 1995.

7-6-4230. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(3); amd. Sec. 59, Ch. 430, L. 1995.

7-6-4231. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(4); amd. Sec. 3, Ch. 702, L. 1983; amd. Sec. 1, Ch. 7, L. 1989; amd. Sec. 60, Ch. 430, L. 1995.

7-6-4232. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(5); amd. Sec. 31, Ch. 252, L. 1979; amd. Sec. 2, Ch. 726, L. 1985; amd. Sec. 4, Ch. 26, Sp. L. June 1986; amd. Sec. 6, Ch. 84, L. 1989; amd. Sec. 61, Ch. 430, L. 1995; amd. Sec. 20, Ch. 584, L. 1999.

7-6-4233. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(6); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-4234. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(3); amd. Sec. 24, Ch. 458, L. 1997.

7-6-4235. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part); amd. Sec. 4, Ch. 702, L. 1983; amd. Sec. 62, Ch. 430, L. 1995.

7-6-4236. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part); amd. Sec. 1, Ch. 485, L. 1985; amd. Sec. 63, Ch. 430, L. 1995.

7-6-4237. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part); amd. Sec. 26, Ch. 458, L. 1997.

7-6-4238. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4239. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 1, Ch. 53, L. 1943; re-en. Sec. 5083.6A, R.C.M. 1935; R.C.M. 1947, 11-1407.

7-6-4240. Repealed. Sec. 61, Ch. 278, L. 2001.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(7); amd. Sec. 64, Ch. 430, L. 1995; amd. Sec. 27, Ch. 458, L. 1997.

7-6-4241. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 9, Ch. 121, L. 1931; re-en. Sec. 5083.9, R.C.M. 1935; R.C.M. 1947, 11-1410; amd. Sec. 1, Ch. 581, L. 1985; amd. Sec. 65, Ch. 430, L. 1995.

7-6-4242 through 7-6-4250 reserved.

7-6-4251. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(4).

7-6-4252. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 32, Ch. 252, L. 1979.

7-6-4253. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 33, Ch. 252, L. 1979.

7-6-4254. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(3); amd. Sec. 42, Ch. 614, L. 1981.

7-6-4255. Repealed. Sec. 29, Ch. 458, L. 1997.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(5), (6); amd. Sec. 28, Ch. 387, L. 1995.

7-6-4256 through 7-6-4258 reserved.

7-6-4259. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 1, Ch. 347, L. 1991; amd. Sec. 2, Ch. 169, L. 1993; amd. Sec. 21, Ch. 584, L. 1999.

7-6-4260. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 15, Ch. 458, L. 1997.

7-6-4261. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 16, Ch. 458, L. 1997; amd. Sec. 22, Ch. 584, L. 1999.

7-6-4262. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 17, Ch. 458, L. 1997.

7-6-4263. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 18, Ch. 458, L. 1997.

7-6-4264. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 19, Ch. 458, L. 1997.

7-6-4265. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 20, Ch. 458, L. 1997.

7-6-4266. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 21, Ch. 458, L. 1997.

7-6-4267. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 22, Ch. 458, L. 1997.

7-6-4268 and 7-6-4269 reserved.

7-6-4270. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 23, Ch. 458, L. 1997.

7-6-4271. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 25, Ch. 458, L. 1997.

7-6-4272. Repealed. Sec. 61, Ch. 278, L. 2001.
History: En. Sec. 28, Ch. 458, L. 1997.

Part 43
Claims Against Municipalities

Part Cross-References

Interest on overdue accounts, Title 7, ch. 6, part 4.

7-6-4301. Presentation of claims against municipality. (1) All accounts and demands against a city or town must be presented to the council in an itemized format. These claims must be presented with all necessary and proper vouchers within 1 year from the date the claims accrued. An action may not be maintained against the city or town for or on account of any demand or claim against the city or town until the demand or claim has first been presented to the council.

(2) Payment of claims against a city or town may be authorized by the council when:

(a) payee-signed claims have been issued to the city or town and the payee has attested in the claim to its accuracy and that the payee has not received the claimed amount; or

(b) the payee has provided the city or town with an invoice or other document identifying the quantity and total cost for each item included on the invoice.

(3) All bills, claims, accounts, or charges for materials of any kind that are purchased by and on behalf of a city or town by its department heads or officers must be reviewed by the city or town finance director or the city or town clerk before submission to the council.

(4) A claim or demand not presented within the time provided in subsection (1) is forever barred, and the council has no authority to allow any account or demand not presented as provided in this section.

History: En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; R.C.M. 1947, 11-1301(part); amd. Sec. 1, Ch. 176, L. 1985; amd. Sec. 493, Ch. 61, L. 2007.

Cross-References

Tort claims against local governments, 2-9-301.

7-6-4302. Payment of claims by warrant or check. All accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. The demand must be paid in accordance with one of the following options:

(1) The mayor may draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk shall pay the warrant out of the proper fund.

(2) The city treasurer or town clerk may pay the demand by check when there are sufficient city funds on deposit in an interest-bearing checking account in a bank within the city or town that are available to cover the check.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; R.C.M. 1947, 11-1302(part); amd. Sec. 34, Ch. 252, L. 1979; amd. Sec. 1, Ch. 261, L. 1985; amd. Sec. 54, Ch. 278, L. 2001.

7-6-4303. Cancellation of municipal warrants and checks. (1) The city or town council may cancel municipal warrants and checks that have remained outstanding and unpaid for a period of 1 year or longer.

(2) The city or town clerk shall:

(a) enter on the record of warrants or checks, opposite the entry of each instrument, the date when it was canceled;

(b) make a list of the canceled instruments, specifying the number, date, and amount and the person to whom it was payable; and

(c) enter the list in the minutes of the city or town council proceedings.

History: En. Sec. 1, Ch. 17, L. 1987.

7-6-4304. Issuance of duplicate warrants and checks. (1) A duplicate warrant or check may be issued by the appropriate municipal officer whenever an instrument drawn by the officer upon the municipality is lost or destroyed. The duplicate warrant or check must be in the same form as the original except that it must have plainly printed across its face the word "duplicate". Except as provided in subsection (2), a duplicate warrant or check may not be issued or delivered unless the person entitled to receive it deposits with the issuing municipal officer a bond in double the amount for which the duplicate warrant or check is issued, conditioned to hold the municipality and its officers harmless on account of the issuance of the duplicate warrant or check.

(2) A bond of indemnity is not required when:

(a) the payee is the U.S. government, a state of the United States, an agency, instrumentality, or officer of the U.S. government or of a state, county, city, city and county, town, district, or other political subdivision of a state, or an officer of an enumerated entity;

(b) the owner or custodian is the state of Montana or an agency or officer of the state;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the U.S. government or by the state of Montana;

(d) the amount of the lost or destroyed warrant or check is less than $100;

(e) it can be established that a crime has been committed, and as a result of the crime, the warrant or check was stolen or destroyed;

(f) it can be established that the warrant or check was mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the municipality.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(e), (2)(f), or (2)(g), a stop-payment order must be placed on the original warrant or check by the municipality.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application must include an agreement to indemnify and hold harmless the municipality or its officers and employees from any loss resulting from the issuance of a duplicate warrant or check. Any loss incurred in connection with the issuance of a duplicate warrant or check must be charged against the account from which the payment was derived.

History: **En. Sec. 1, Ch. 167, L. 1987; amd. Sec. 6, Ch. 83, L. 1989; amd. Sec. 494, Ch. 61, L. 2007.**

7-6-4305 through 7-6-4310 reserved.

7-6-4311. Liability for false claims. (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any city or town or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the city or town as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be claimed in the same suit.

History: **En. Sec. 1, Ch. 366, L. 1989.**

Part 44
Municipal Taxation

Part Cross-References

Resort tax, Title 7, ch. 6, part 15.

Actions arising from seizure or sale of property for taxes, 27-2-210.

7-6-4401. General taxing power of municipalities. Subject to 15-10-420, the city or town council may levy and collect taxes for general and special public or governmental purposes on all property within the city or town subject to taxation under the laws of the state.

History: **En. Subd. 2, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.1, R.C.M. 1935; R.C.M. 1947, 11-902; amd. Sec. 23, Ch. 584, L. 1999; amd. Sec. 8, Ch. 453, L. 2005.**

Cross-References

Legislative powers, 7-1-4123.

Taxation — public and governmental purposes, 7-6-2527.

7-6-4402. Tax-related duties of city treasurer. It is the duty of the city treasurer to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: **En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 35, Ch. 252, L. 1979.**

7-6-4403. Tax-related duties of city clerk. It is the duty of the clerk to perform such duties in and about the assessment, levy, and collection of taxes and assessments as may be prescribed by law or ordinance.

History: **En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).**

7-6-4404. Tax-related duties of town clerk. It is the duty of the town clerk to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: **En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 36, Ch. 252, L. 1979.**

7-6-4405. Repealed. Sec. 171, Ch. 584, L. 1999.

History: **En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).**

7-6-4406. Authority to levy special taxes and assessments. Subject to 15-10-420, the council may assess and levy the special taxes or assessments provided for in this title.

History: **En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R.C.M. 1921; re-en. Sec. 5200, R.C.M. 1935; R.C.M. 1947, 84-4712; amd. Sec. 24, Ch. 584, L. 1999.**

7-6-4407. Repealed. Sec. 61, Ch. 278, L. 2001.

History: **En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R.C.M. 1921; amd. Sec. 1, Ch. 49, L. 1925; re-en. Sec. 5216, R.C.M. 1935; R.C.M. 1947, 84-4729; amd. Sec. 15, Ch. 133, L. 1993; amd. Sec. 25, Ch. 584, L. 1999.**

7-6-4408. Repealed. Sec. 61, Ch. 278, L. 2001.

History: **En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M.**

1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part); amd. Sec. 66, Ch. 430, L. 1995.

7-6-4409. Determination of assessments. (1) The assessment made by the department of revenue for state and county purposes is the basis of taxation for cities and towns for the property situated in the city or town.

(2) It is the duty of the department, in making the property tax record, to separately and distinctly designate the real and personal property situated in cities and towns within each county in the state.

History: (1)En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R.C.M. 1921; re-en. Sec. 5205, R.C.M. 1935; amd. Sec. 92, Ch. 405, L. 1973; Sec. 84-4717, R.C.M. 1947; (2)En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R.C.M. 1921; re-en. Sec. 5206, R.C.M. 1935; amd. Sec. 93, Ch. 405, L. 1973; Sec. 84-4718, R.C.M. 1947; R.C.M. 1947, 84-4717, 84-4718; amd. Sec. 9, Ch. 27, Sp. L. November 1993.

7-6-4410. Property tax record to be furnished to certain municipalities. On or before the first Monday in August of each year, the department of revenue shall furnish a certified copy of the property tax record to all cities of the third class and towns within each county that make written request for the record on or before the first Monday in April of each year. The property tax record must pertain to property within the limits of the requesting cities and towns.

History: (1)En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R.C.M. 1921; re-en. Sec. 5207, R.C.M. 1935; amd. Sec. 94, Ch. 405, L. 1973; Sec. 84-4719, R.C.M. 1947; (2)En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R.C.M. 1921; re-en. Sec. 5208, R.C.M. 1935; amd. Sec. 95, Ch. 405, L. 1973; Sec. 84-4720, R.C.M. 1947; R.C.M. 1947, 84-4719, 84-4720; amd. Sec. 10, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 34, L. 2003.

Cross-References

Classification of municipalities, 7-1-4111.

7-6-4411. Equalization of assessments. (1) The equalization of assessments of property made by the department of revenue applies to the assessment of property in any city or town and must be taken as the equalization thereof.

(2) The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: (1)En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R.C.M. 1921; re-en. Sec. 5209, R.C.M. 1935; amd. Sec. 96, Ch. 405, L. 1973; Sec. 84-4721, R.C.M. 1947; (2)En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 5210, R.C.M. 1921; re-en. Sec. 5210, R.C.M. 1935; R.C.M. 1947, 84-4721, 84-4722.

Cross-References

Equalization, Title 15, ch. 9.

7-6-4412. Preparation of municipal property tax record. (1) The county clerk, on or before the first Monday in October in each year, shall provide a copy of the property tax record to each city in the county if the city treasurer is required by an ordinance of the city to collect its taxes. The record must be a copy of the corrected property tax record of the county, as far as it refers to city property.

(2) The copy must be in a form that itemizes the different funds so that the city treasurer may extend the funds and collect the taxes.

History: (1)En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R.C.M. 1921; re-en. Sec. 5211, R.C.M. 1935; Sec. 84-4723, R.C.M. 1947; (2)En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R.C.M. 1921; re-en. Sec. 5212, R.C.M. 1935; Sec. 84-4724, R.C.M. 1947; (3)En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R.C.M. 1921; re-en. Sec. 5213, R.C.M. 1935; Sec. 84-4725, R.C.M. 1947; R.C.M. 1947, 84-4723, 84-4724, 84-4725; amd. Sec. 11, Ch. 27, Sp. L. November 1993.

7-6-4413. Collection of taxes. (1) Except in the case of cities of the first, second, and third classes that provide by ordinance for the city treasurer to collect the taxes from the corrected property tax record, the county treasurer of each county shall collect the tax levied by all cities and towns in the respective county.

(2) The county treasurer shall collect the city or town taxes at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 12, Ch. 27, Sp. L. November 1993; amd. Sec. 15, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (2) after "taxes" deleted "including unpaid road poll taxes"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Classification of municipalities, 7-1-4111.

7-6-4414. Sales for delinquent taxes when county collects municipal tax. (1) All publications of sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law.

(2) All money received from sales, after a deed is given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in 15-17-322.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 37, Ch. 252, L. 1979; amd. Sec. 27, Ch. 587, L. 1987.

Cross-References

Tax sales, Title 15, ch. 17.

Actions arising from seizure or sale of property for taxes, 27-2-210.

7-6-4415 through 7-6-4420 reserved.

7-6-4421. Authorization for tax levy and collection by municipality. (1) Subject to 15-10-420, the council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county public or governmental purposes and may by ordinance provide for the levy and collection of the taxes.

(2) Until the passage of the ordinance, the levy and collection of municipal taxes are and the proceedings for those purposes must be as provided in this part.

History: (1)En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R.C.M. 1921; re-en. Sec. 5203, R.C.M. 1935; amd. Sec. 90, Ch. 405, L. 1973; Sec. 84-4715, R.C.M. 1947; (2)En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R.C.M. 1921; re-en. Sec. 5204, R.C.M. 1935; amd. Sec. 91, Ch. 405, L. 1973; Sec. 84-4716, R.C.M. 1947; R.C.M. 1947, 84-4715, 84-4716; amd. Sec. 26, Ch. 584, L. 1999; amd. Sec. 9, Ch. 453, L. 2005.

Cross-References

Legislative powers, 7-1-4123.

Taxation — public and governmental purposes, 7-6-2527.

7-6-4422. Authorization for collection of delinquent taxes by municipalities. (1) All cities in Montana which by ordinance provide for the collection of city taxes and assessments are hereby authorized and empowered to solicit payment, ask for, receive, and receipt for delinquent taxes and assessments due any such city.

(2) Upon receipt of payment for delinquent taxes and assessments by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated:

(a) the fact of such payment with the amount thereof;

(b) a description of the property charged with such delinquent taxes or assessments so paid; and

(c) the name of the person to whom the same were assessed.

(3) Nothing in this section is intended to or shall prevent the county treasurer of the county in which such city is situated from collecting such delinquent taxes or assessments, but this section is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933; re-en. Sec. 5215.2, R.C.M. 1935; R.C.M. 1947, 84-4728.

7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1) (a) In a city or town that collects its own taxes or special assessments when any taxes or assessments become delinquent, a tax lien sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessments become delinquent, certifies the delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) The certificate must contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person taxed or assessed;

(iii) the date when the tax or assessment became delinquent;

(iv) the amount of the delinquent tax or assessment and the penalty to be added, if any.

(c) If any special assessment is payable in installments and any installment becomes delinquent, the amount of the delinquent installment must be included in the certificate. If the city or town council, by the adoption of an appropriate resolution, declares the total assessment remaining unpaid to be delinquent, as provided in 7-12-4182, then that total must be included in the certificate.

(2) Upon receipt of the certificate, the county treasurer shall enter the delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes shall include all city and town delinquent taxes and assessments. There may be only one sale for each piece of property. The sale must cover the aggregate of the city, town, county, and state taxes and special assessments, including penalties, interest, and costs provided by law.

History: **En. Sec. 1, Ch. 148, L. 1927; re-en. Sec. 5215.1, R.C.M. 1935; R.C.M. 1947, 84-4727; amd. Sec. 12, Ch. 370, L. 1987; amd. Sec. 1, Ch. 105, L. 1995; amd. Sec. 2, Ch. 110, L. 2007.**

Cross-References

Tax sales, Title 15, ch. 9.

Actions arising from seizure or sale of property for taxes, 27-2-210.

7-6-4424 through 7-6-4430 reserved.

7-6-4431. Authorization to exceed or impose less than maximum mill levy — election required to exceed. The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy allowed by 15-10-420 under the following conditions:

(1) The governing body shall pass a resolution indicating its intent to exceed the current statutory mill levy limit on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific dollar amount to be raised; and

(c) the approximate number of mills required.

(2) The governing body shall submit the question of the additional mill levy to the qualified electors of the municipality at an election as provided in 15-10-425. The question may not be submitted more than once in any calendar year. If the majority of voters voting on the question is in favor of the additional levy or levies, the governing body is authorized to impose the mill levy in the amount specified in the resolution.

(3) An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).

History: **Ap. p. Sec. 1, Ch. 12, L. 1919; re-en. Sec. 5195, R.C.M. 1921; re-en. Sec. 5195, R.C.M. 1935; Sec. 84-4706, R.C.M. 1947; Ap. p. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; Sec. 84-4709, R.C.M. 1947; R.C.M. 1947, 84-4706, 84-4709(part); amd. Sec. 38, Ch. 252, L. 1979; amd. Sec. 1, Ch. 614, L. 1979; amd. Sec. 2, Ch. 361, L. 2001; amd. Sec. 12, Ch. 495, L. 2001; amd. Sec. 33, Ch. 574, L. 2001.**

Cross-References

Date of primary elections, 13-1-107.

7-6-4432. Repealed. Sec. 253, Ch. 574, L. 2001.

History: **En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 2, Ch. 614, L. 1979.**

7-6-4433. Repealed. Sec. 42, Ch. 252, L. 1979; Sec. 407, Ch. 571, L. 1979; Sec. 8, Ch. 614, L. 1979.

History: **En. Sec. 5, Ch. 12, L. 1919; re-en. Sec. 5199, R.C.M. 1921; re-en. Sec. 5199, R.C.M. 1935; R.C.M. 1947, 84-4710.**

7-6-4434. Repealed. Sec. 253, Ch. 574, L. 2001.

History: **En. Sec. 2, Ch. 12, L. 1919; re-en. Sec. 5196, R.C.M. 1921; re-en. Sec. 5196, R.C.M. 1935; R.C.M. 1947, 84-4707; amd. Sec. 305, Ch. 571, L. 1979; amd. Sec. 3, Ch. 614, L. 1979.**

7-6-4435. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part).**

7-6-4436. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part); amd. Sec. 306, Ch. 571, L. 1979; amd. Sec. 5, Ch. 614, L. 1979.

7-6-4437. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 6, Ch. 614, L. 1979.

7-6-4438. Tax levy and expenditures for municipal and administrative purposes when limits on municipal indebtedness exceeded. (1) Subject to 15-10-420, taxes levied and collected for municipal and administrative purposes by any city or town in which the indebtedness equals or exceeds the limit allowed by statute may be used in payment of current expenses during the fiscal year for which the taxes were levied as if a special levy had been made for each of the purposes. The council of the city or town may designate the amount of the general levy applicable to each of the purposes. The amount designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses are payable only out of the fund.

(2) Subject to 15-10-420, a city, the indebtedness of which equals or exceeds the limit allowed by statute, may levy and collect special taxes for municipal and administrative purposes, and the city council in making special levies shall designate the amount for each of the purposes. Each tax, when collected, constitutes a fund out of which the expenses incurred for the purpose for which the tax was levied must be paid. The expenses incurred for any particular purpose may be paid only out of the specified fund.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1903; amd. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R.C.M. 1921; amd. Sec. 2, Ch. 175, L. 1925; re-en. Sec. 5201, R.C.M. 1935; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973; amd. Sec. 58, Ch. 566, L. 1977; Sec. 84-4713, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R.C.M. 1921; re-en. Sec. 5202, R.C.M. 1935; Sec. 84-4714, R.C.M. 1947; R.C.M. 1947, 84-4713, 84-4714; amd. Sec. 39, Ch. 252, L. 1979; amd. Sec. 27, Ch. 584, L. 1999.

7-6-4439. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 7, Ch. 614, L. 1979; amd. Sec. 13, Ch. 370, L. 1987.

7-6-4440 through 7-6-4450 reserved.

7-6-4451. All-purpose mill levy authorized. It is the purpose of 7-6-4451 and 7-6-4453 through 7-6-4455 to authorize the cities and towns of Montana to make an all-purpose annual mill levy in lieu of the multiple levies authorized by the statutes of Montana.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.1(part); amd. Sec. 34, Ch. 574, L. 2001.

Cross-References

Use of resort community tax revenue to reduce property tax, 7-6-1507.

7-6-4452. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part); amd. Sec. 28, Ch. 584, L. 1999.

7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy does not include the levies imposed for bonded indebtedness, to pay judgments or tax protest refunds, or for special improvement district revolving funds of municipalities. Subject to 15-10-420, additional levies may be made in addition to the all-purpose mill levy, as provided in subsection (2). Sections 7-6-4451, 7-6-4454, 7-6-4455, and this section may not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, tax protest refunds, or special improvement district revolving funds may be made by municipalities in addition to the all-purpose mill levy provided for in 7-6-4451, 7-6-4454, 7-6-4455, and this section.

History: Ap. p. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; Sec. 84-4701.1, R.C.M. 1947; Ap. p. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971; Sec. 84-4701.6, R.C.M. 1947; Ap. p. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; Sec. 84-4701.2, R.C.M. 1947; R.C.M. 1947, 84-4701.1(part), 84-4701.2(part), 84-4701.6; amd. Sec. 1, Ch. 372, L. 1983; amd. Sec. 2, Ch. 26, Sp. L. June 1986; amd. Sec. 29, Ch. 584, L. 1999; amd. Sec. 35, Ch. 574, L. 2001.

Cross-References

"Drake Amendment" — state mandated duties require funding, 1-2-112.

Payment of judgments, 2-9-316.

Special improvement district revolving funds, 7-12-4221 through 7-12-4229.
Tax protest refunds, 15-1-402.

7-6-4454. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.5.

7-6-4455. Changes from all-purpose mill levy method. Any municipality electing to follow the all-purpose mill levy method provided for in 7-6-4451 is bound by that election during the ensuing fiscal year but may abandon the all-purpose mill levy method in succeeding fiscal years.

History: En. Sec. 4, Ch. 82, L. 1965; R.C.M. 1947, 84-4701.4; amd. Sec. 36, Ch. 574, L. 2001.

7-6-4456 through 7-6-4460 reserved.

7-6-4461. Renumbered 7-6-1501. Code Commissioner, 1997.

7-6-4462. Renumbered 7-6-1502. Code Commissioner, 1997.

7-6-4463. Renumbered 7-6-1503. Code Commissioner, 1997.

7-6-4464. Renumbered 7-6-1504. Code Commissioner, 1997.

7-6-4465. Renumbered 7-6-1505. Code Commissioner, 1997.

7-6-4466. Renumbered 7-6-1506. Code Commissioner, 1997.

7-6-4467. Renumbered 7-6-1507. Code Commissioner, 1997.

7-6-4468. Renumbered 7-6-1508. Code Commissioner, 1997.

7-6-4469. Renumbered 7-6-1509. Code Commissioner, 1997.

Part 45
Municipal Warrants

7-6-4501. Interest on unpaid warrants — payments to state — definition. (1) When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the warrant is not paid for want of funds, the city treasurer or town clerk shall endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing the treasurer's or clerk's name to the warrant.

(2) From the time of the endorsement until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance, or if the warrant is subject to purchase for investment by a county as provided in 7-6-2701 and is held by a county, the warrant bears interest at a rate fixed by the board of county commissioners under 7-6-2701.

(3) All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the city or town has the technology to conduct electronic funds transfers.

(4) As used in this part, "warrant" includes a check and an electronic funds transfer.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R.C.M. 1921; re-en. Sec. 5081, R.C.M. 1935; amd. Sec. 12, Ch. 234, L. 1971; R.C.M. 1947, 11-1307; amd. Sec. 40, Ch. 252, L. 1979; amd. Sec. 2, Ch. 92, L. 1985; amd. Sec. 55, Ch. 278, L. 2001; amd. Sec. 2, Ch. 432, L. 2005.

7-6-4502. Call for payment of warrants drawing interest. (1) Except as provided in subsection (2), when there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the warrants, the city treasurer or town clerk shall:

(a) give notice in some newspaper published in the city or town or, if a newspaper is not published in the city or town, by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that the treasurer or clerk is ready to pay the warrants and giving the number of the warrants to be paid; and

(b) if the warrants are subject to purchase by the county for investment as provided in 7-6-2701, notify the county treasurer that any warrants in the possession of the county will be paid upon presentation to the city treasurer or town clerk.

(2) If all of the warrants are held by a county, only the notice provided for in subsection (1)(b) is required.

(3) The warrants called cease to draw interest from the time of the first publication or posting of the notice unless all of the warrants are held by a county, in which case the warrants cease to draw interest from the time of notification of the county treasurer.

History: **En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907; re-en. Sec. 5082, R.C.M. 1921; re-en. Sec. 5082, R.C.M. 1935; R.C.M. 1947, 11-1308; amd. Sec. 3, Ch. 92, L. 1985; amd. Sec. 495, Ch. 61, L. 2007.**

7-6-4503. Registration of warrants. Upon the presentation of any warrant endorsed as specified in 7-6-4501, it shall be the duty of the city treasurer or town clerk to record, in a book to be provided for that purpose, the warrant, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof.

History: **En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).**

7-6-4504. Order of redemption of warrants. All warrants to be redeemed as provided for in 7-6-4502 shall be redeemed in the order of their registration, beginning with the date of the warrant first so registered.

History: **En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).**

Part 46
Deposit and Investment of Municipal Money

Part Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.
State unified investment fund, Title 17, ch. 6, part 2.
Montana Facility Finance Authority bonds — legal investment, 90-7-113.

7-6-4601. Deposit of public money. The city treasurer or town clerk, whichever is appropriate, shall deposit all public money in the treasurer's or clerk's possession and under the treasurer's or clerk's control, except as may be required for current business, only in any solvent bank or banks located in the city or town and subject to national supervision or state examination, as the council shall designate.

History: **Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part); amd. Sec. 496, Ch. 61, L. 2007.**

7-6-4602. Interest rate on deposited public money. Public money deposited pursuant to 7-6-4601 shall bear interest at a rate no less than the rate of interest paid on money from private sources on the same terms.

History: **Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part); amd. Sec. 1, Ch. 21, L. 1989.**

7-6-4603. Investment of municipal money in city or town warrants. (1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and that, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council may direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town issued against funds in which there are not sufficient funds to pay the city or town warrants at the time of issuance.

(2) (a) If warrants are purchased, the city or town council shall designate the fund or funds to be invested and shall fix the amount of investment and shall also designate the city or town warrants that are to be purchased by the funds. The city or town clerk shall cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase the warrant.

(b) The city treasurer or town clerk shall, when the city or town warrant is presented, purchase the warrant out of the proper fund as designated by the city or town council. The warrant purchased must be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk.

History: **En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(1); amd. Sec. 41, Ch. 252, L. 1979; amd. Sec. 497, Ch. 61, L. 2007.**

CHAPTER 7
DEBT MANAGEMENT

Part 1 — General Provisions Related to Local Governments

7-7-101. Repealed.
7-7-102. Repealed.
7-7-103. Repealed.
7-7-104. Limitation on action to test bond validity.
7-7-105. Challenges to local government bond elections.
7-7-106. Hearing and determination on challenge.
7-7-107. Limitation on amount of bonds for city-county consolidated units.
7-7-108. Authorization for additional indebtedness for water or sewer systems.
7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds.
7-7-110. Authorization of bonds.
7-7-111 through 7-7-120 reserved.
7-7-121. Misconduct in relation to bond funds.
7-7-122. Prosecution for misconduct.
7-7-123. Investment of sinking funds of local governments.
7-7-124. Limitation on investment of sinking funds.
7-7-125 through 7-7-130 reserved.
7-7-131. Bankruptcy — definitions.
7-7-132. Procedure to declare bankruptcy.
7-7-133. Power to comply with court decrees related to bankruptcy.
7-7-134. Role of state and state agencies in relation to bankruptcy.
7-7-135 through 7-7-139 reserved.
7-7-140. Recovery zone economic development bonds and recovery zone facility bonds.
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Chapter Cross-References
Local government debt, Art. VIII, sec. 10, Mont. Const.

Part 1
General Provisions Related to Local Governments

7-7-101. Repealed. Sec. 14, Ch. 94, L. 2007.
History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part); amd. Sec. 1, Ch. 248, L. 1979.

7-7-102. Repealed. Sec. 14, Ch. 94, L. 2007.
History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 2, Ch. 248, L. 1979.

7-7-103. Repealed. Sec. 14, Ch. 94, L. 2007.
History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part); amd. Sec. 3, Ch. 248, L. 1979; amd. Sec. 5, Ch. 511, L. 1989; amd. Sec. 5, Ch. 559, L. 1993.

7-7-104. Limitation on action to test bond validity. A local government general obligation bond of any issue may not be held invalid because of any defect or failure to comply with a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the local government.
History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412; amd. Sec. 4, Ch. 248, L. 1979; amd. Sec. 1, Ch. 451, L. 2005; amd. Sec. 1, Ch. 94, L. 2007.

7-7-105. Challenges to local government bond elections. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period. This subsection applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.
History: (1)En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; Sec. 93-2612, R.C.M. 1947; (2)En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971; Sec. 23-4201, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 23-4201, 93-2612(part), 93-2720; amd. Sec. 1, Ch. 212, L. 1979.

7-7-106. Hearing and determination on challenge. (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where the defendant last resided.

(3) The court shall meet at the time and place designated to determine the contested election and has all the powers necessary to the determination of the election.

(4) The court is governed by the rules of law and evidence governing the determination of questions of law and fact so far as the rules may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment, either confirming or annulling and setting aside the election. The judgment must be entered immediately after the pronouncement.

History: En. Sec. 213, Ch. 368, L. 1969; R.C.M. 1947, 23-4202; amd. Sec. 499, Ch. 61, L. 2007.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.
Montana Rules of Evidence, Title 26, ch. 10.

7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, a city-county consolidated local government may not issue bonds for any purpose in an amount that, with all outstanding indebtedness, exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the consolidated government, as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 43, Ch. 614, L. 1981; amd. Sec. 3, Ch. 285, L. 1999; amd. Sec. 22, Ch. 426, L. 1999; amd. Sec. 17, Ch. 556, L. 1999; amd. Sec. 5, Ch. 29, L. 2001.

7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government that owns and controls the water supply and water system and devotes the revenue from the supply and system to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both purposes may not in the aggregate exceed 10% over and above the debt limitation referred to in 7-7-107.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 44, Ch. 614, L. 1981; amd. Sec. 4, Ch. 285, L. 1999; amd. Sec. 6, Ch. 29, L. 2001.

7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds. (1) As used in this section, the following definitions apply:

(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) "Political subdivision" means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) (a) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law or the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds, its governing body may by resolution issue and sell, in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized or the total amount of the loan or

grant that is committed, notes maturing within not more than 3 years from the date on which the notes are issued.

(b) The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment for the purchase of the bonds or for the grant or loan in an amount that in the aggregate is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.

(3) The proceeds of the grant, loan, or bonds, when received, must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) (a) To the extent that proceeds described in subsection (3) are not sufficient to pay the notes and interest on those notes when due, the notes must be paid from any other funds that are legally available and appropriated by the governing body for that purpose.

(b) If the notes are issued in anticipation of the issuance of bonds, any amount of the notes that cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a) must be paid from the proceeds of bonds to be issued and sold before the maturity date.

(c) If sufficient funds are not available for payment in full of the notes at maturity, the holders of the notes have the right to require the issuance of bonds in exchange for the notes, with the bonds maturing, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes.

(d) If notes are validly issued under then-applicable law in anticipation of the issuance of bonds, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then-applicable law concerning the principal amount of the bonds.

(e) If the notes are issued in anticipation of the receipt of a grant or other revenue source and cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a), the political subdivision may, to the extent otherwise authorized by law, issue bonds to provide for payment of those notes.

History: En. Secs. 1, 2, Ch. 181, L. 1979; amd. Sec. 1, Ch. 512, L. 1985; amd. Sec. 2, Ch. 423, L. 1995; amd. Sec. 2, Ch. 451, L. 2005.

Cross-References

Bond issues for certain purposes, 20-9-403.

7-7-110. Authorization of bonds. (1) Upon approval by the Montana transportation commission, a city, county, or consolidated city-county government may issue revenue bonds to finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction to:

(a) fund the share that the bond issuer might otherwise expend for proportionate matching of federal funds allocated for the construction of highways, roads, streets, or bridges;

(b) make a deposit to a reserve fund securing the bonds; and

(c) pay costs of issuance and sale of the bonds.

(2) The bonds may be authorized by a resolution adopted by the governing body of the bond issuer without need for authorization by the electors of the bond issuer. The resolution must establish the terms, covenants, and conditions of the bonds. The resolution may authorize that the bonds be issued under and secured by a trust indenture between the issuer and a trustee, which may be a trust company or bank having the power of a trustee inside or outside the state. The bonds may be sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.

(3) The bonds are payable from and secured by the grants or other funds payable to and received by the department of transportation and apportioned by the department of transportation to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2). In the resolution or the trust indenture providing for the issuance of the bonds, the governing body of the issuer shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by the department of transportation in an amount sufficient to pay the principal of and the interest on the bonds as due.

(4) Bonds may be issued under this section only if:

(a) the bonds are issued in principal amounts and on terms that provide that the amount of principal and interest due in any fiscal year on the bonds and on any other revenue bonds of the issuer outstanding and issued under this section does not exceed the amount of the revenue pledged to the payment of the bonds and to be received in that fiscal year as estimated by the governing body of the issuer in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.

(5) Proceeds from the sale of the bonds must be used to fund urban highway system projects approved by the transportation commission through an agreement with the issuer in accordance with 60-2-127(4), and the proceeds to be used for the construction must be deposited with the department of transportation. The proceeds must be expended by the department of transportation in accordance with other applicable provisions of law.

(6) A city, county, or consolidated city-county government issuing bonds pursuant to this section shall certify to the director of the department of transportation and the director of the department of administration promptly upon the issuance of the bonds the principal amount and terms of the bonds and the amount of money required each fiscal year for the payment of principal and interest on the bonds.

(7) The powers conferred on a city, county, or consolidated city-county government by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local laws. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling.

History: En. Sec. 1, Ch. 336, L. 2005.

7-7-111 through 7-7-120 reserved.

7-7-121. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any county, city, or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, or other municipal or public corporation which they represent if they shall fail to perform any such duties required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, or appropriate or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: (1)En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; Sec. 59-534, R.C.M. 1947; (2)En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; Sec. 59-535, R.C.M. 1947; R.C.M. 1947, 59-534(part), 59-535(part).

7-7-122. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 7-7-121. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

7-7-123. Investment of sinking funds of local governments. (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as are not needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities that are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested must be kept in the custody of the county or city treasurer or town clerk and held for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section must be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 1, Ch. 256, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 8, Ch. 179, L. 1995.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

7-7-124. Limitation on investment of sinking funds. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 2, Ch. 256, L. 1979.

7-7-125 through 7-7-130 reserved.

7-7-131. Bankruptcy — definitions. As used in 7-7-132 through 7-7-134 and this section, the following definitions apply:

(1) "Legislative body" means:

(a) the governing body of a city or town;

(b) the governing body of a local entity that is a district if, by law, the district must have a governing body; or

(c) the governing body of the city, town, or county that created a local entity that is a district if law does not require the district to have a separate governing body. Unless otherwise agreed to by the governing bodies of the county and of the city or town, a joint board composed of an equal number of members from each governing body shall act as the district governing body of a district that was jointly created by the county and the city or town.

(2) "Local entity" means a district created under Title 7, chapter 12, a city, or a town, but the term does not include a county.

History: En. Sec. 1, Ch. 296, L. 1995.

7-7-132. Procedure to declare bankruptcy. (1) A local entity may submit itself and a proposed plan of adjustment to the jurisdiction of the bankruptcy court having jurisdiction of the matter. If the local entity submits a proposed plan of adjustment, it is governed, subject to the provisions of Montana law applicable to the local entity, by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The local entity shall compose and enter into, submit itself to, and perform the plan of adjustment as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its legislative body of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the adjustment of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the local entity shall proceed to the adjustment of its indebtedness under the provisions of the federal laws; and

(b) upon the acceptance or considered acceptance of the proposed plan of adjustment of the petitioning local entity as provided in the federal laws.

History: En. Sec. 1, Ch. 114, L. 1939; R.C.M. 1947, 11-1303; amd. Sec. 3, Ch. 212, L. 1979; amd. Sec. 2, Ch. 296, L. 1995; Sec. 7-7-4111, MCA 1993; redes. 7-7-132 by Code Commissioner, 1995.

7-7-133. Power to comply with court decrees related to bankruptcy. A local entity shall comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the adjustment of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court. The orders and decrees of the bankruptcy court must be based on the Montana law applicable to the local entity.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 212, L. 1979; amd. Sec. 3, Ch. 296, L. 1995; Sec. 7-7-4112, MCA 1993; redes. 7-7-133 by Code Commissioner, 1995.

7-7-134. Role of state and state agencies in relation to bankruptcy. The state or any department or agency of the state holding any of the securities of a local entity has the power to consent to any plan of adjustment of the indebtedness of the local entity by the board or official that has custody of and control over the securities.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 296, L. 1995; Sec. 7-7-4113, MCA 1993; redes. 7-7-134 by Code Commissioner, 1995.

Cross-References

Attorney General — bankruptcy duties, 2-15-501.

7-7-135 through 7-7-139 reserved.

7-7-140. Recovery zone economic development bonds and recovery zone facility bonds. (1) Subject to the conditions and provisions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the availability of allocation as determined in 17-5-116, cities and counties are authorized to designate economic recovery zones and issue recovery zone economic development bonds and recovery zone facility bonds to finance the costs of recovery zone projects and facilities eligible under the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The bonds must be authorized by the governing body of the city or county in accordance with the applicable provisions of Montana law, unless otherwise provided in 17-5-117. The governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

(a) if the bonds that are issued under this section pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;

(b) if the bonds are payable from and secured solely by the revenue from a governmentally owned and operated facility or undertaking, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;

(c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;

(d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;

(e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with the provisions of Title 90, chapter 5, part 1.

History: En. Sec. 45, Ch. 489, L. 2009.

Compiler's Comments

Effective Date: Section 80, Ch. 489, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 14, 2009.

7-7-141. Qualified energy conservation bonds. (1) Subject to the conditions and provisions contained in section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the availability of an allocation, cities and counties are authorized to issue qualified energy conservation bonds to finance projects for qualified energy conservation purposes and are authorized to undertake the qualified energy conservation purposes and programs within the meaning of the section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The bonds must be authorized by the governing body of the city or county in accordance with the provisions of applicable Montana law, except as otherwise provided in 17-5-117. The

governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

(a) if the bonds that are to be issued under this section pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;

(b) if the bonds to be issued under this section are payable from and secured solely by the revenue derived or generated from a qualified energy conservation program or project, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;

(c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;

(d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;

(e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with the provisions of Title 90, chapter 5, part 1.

History: En. Sec. 46, Ch. 489, L. 2009.

Compiler's Comments

Effective Date: Section 80, Ch. 489, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 14, 2009.

Parts 2 through 20 reserved

Part 21

General Provisions Related to Counties

7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402, a county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part); amd. Sec. 4, Ch. 134, L. 1981; amd. Sec. 45, Ch. 614, L. 1981; amd. Sec. 1, Ch. 584, L. 1985; amd. Sec. 6, Ch. 695, L. 1985; amd. Sec. 2, Ch. 655, L. 1987; amd. Sec. 67, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 9, Sp. L. November 1993; amd. Sec. 22, Ch. 451, L. 1995; amd. Sec. 11, Ch. 570, L. 1995; amd. Sec. 1, Ch. 227, L. 1997; amd. Sec. 2, Ch. 466, L. 1997; amd. Sec. 5, Ch. 285, L. 1999; amd. Sec. 23, Ch. 426, L. 1999; amd. Sec. 18, Ch. 556, L. 1999; amd. Sec. 6, Ch. 7, L. 2001; amd. Sec. 7, Ch. 29, L. 2001; amd. Sec. 2, Ch. 35, L. 2003; amd. Sec. 2, Ch. 187, L. 2007; amd. Sec. 25, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (2) near beginning after "7-7-2402" deleted "and 7-21-3413". Amendment effective July 1, 2009.

Cross-References

Local government debt, Art. VIII, sec. 10, Mont. Const.

7-7-2102. Effect of exceeding limits on indebtedness. All bonds or obligations in excess of such amount given by or on behalf of the county are void.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part).

7-7-2103. Restriction on use of county credit by private persons. No county must ever give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person, company, or corporation.

History: En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907; re-en. Sec. 4445, R.C.M. 1921; Cal. Pol. C. Sec. 4004; re-en. Sec. 4445, R.C.M. 1935; R.C.M. 1947, 16-805.

7-7-2104. Replacement of lost bond, warrant, or coupon. (1) The board may issue a duplicate warrant, bond, or coupon whenever any warrant, bond, or coupon drawn by it upon the treasury of the county is lost or destroyed. The duplicate warrant, bond, or coupon must be in the same form as the original and will take the place in order of registration and payment of and supersede the original bond, warrant, or coupon. It must have the word "duplicate" plainly printed across its face.

(2) No duplicate warrant, bond, or coupon may be issued under this section unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant, bond, or coupon is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

(3) No bond of indemnity is required:

(a) when a payee is the state of Montana or any agency, instrumentality, or officer of the state;

(b) when the owner or custodian is the state or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, credit union, admitted insurer, or trust company whose financial condition is regulated by the state;

(d) when it can be established that a crime has been committed and that as a result of such crime a county warrant, bond, or coupon has been stolen or destroyed; or

(e) when it can be established that a county warrant, bond, or coupon has been mailed to an incorrect payee.

(4) If the owner or custodian applies under the provisions of subsection (3)(d) or (3)(e), a stop-payment order shall be placed on the original warrant, bond, or coupon by the county treasurer.

(5) If the owner or custodian applies under the provisions of subsection (3)(c), (3)(d), or (3)(e), the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant, bond, or coupon. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Secs. 1, 3, 4, p. 83, L. 1881; re-en. Secs. 4251, 4253, 4254, Pol. C. 1895; re-en. Secs. 2916, 2918, 2919, Rev. C. 1907; re-en. Secs. 4626, 4628, 4629, R.C.M. 1921; re-en. Secs. 4626, 4628, 4629, R.C.M. 1935; R.C.M. 1947, 16-2003, 16-2005, 16-2006; amd. Sec. 1, Ch. 110, L. 1979; amd. Sec. 7, Ch. 421, L. 1985.

Cross-References

Financial Institutions, Title 32.

7-7-2105. Repealed. Sec. 3, Ch. 110, L. 1979.

History: En. Sec. 2, p. 83, L. 1881; re-en. Sec. 4252, Pol. C. 1895; re-en. Sec. 2917, Rev. C. 1907; re-en. Sec. 4627, R.C.M. 1921; re-en. Sec. 4627, R.C.M. 1935; R.C.M. 1947, 16-2004.

7-7-2106. Procedure if original bond, warrant, or coupon is presented. The county treasurer, upon the production of any original bond, warrant, or coupon by the lawful owner or holder, shall assign by endorsement and deliver to the owner or holder the surety bond mentioned in 7-7-2104. The owner or holder may maintain an action upon the surety bond for the recovery of any money paid upon the duplicate, but the delivery of the surety bond does not relieve or exonerate the county from the payment of the amount specified in the bond upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the amount.

History: En. Sec. 5, p. 83, L. 1881; re-en. Sec. 4255, Pol. C. 1895; re-en. Sec. 2920, Rev. C. 1907; re-en. Sec. 4630, R.C.M. 1921; re-en. Sec. 4630, R.C.M. 1935; R.C.M. 1947, 16-2007; amd. Sec. 2, Ch. 110, L. 1979; amd. Sec. 500, Ch. 61, L. 2007.

7-7-2107 through 7-7-2110 reserved.

7-7-2111. Authorization to issue construction bonds. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of the code.

History: En. Subd. 27, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.26, R.C.M. 1935; R.C.M. 1947, 16-1029.

7-7-2112. Investment of certain construction bond proceeds. (1) Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings or for other construction may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, when emergency conditions beyond the control of the county commissioners exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part).

Part 22
County General Obligation Bonds

7-7-2201. Purposes for which general obligation bonds of county may be issued. The board of county commissioners of a county may issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for any of the following purposes:

(1) acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control, and maintain except that if the bonds are sold to fund a multicounty jail facility, funds may be used in the county in which the multicounty jail facility is located;

(2) acquiring land for any other public use or activity within the county, under its control and authorized by law;

(3) (a) constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law;

(b) making additions to and repairing buildings; and

(c) furnishing and equipping the buildings except that if the bonds are sold to fund a multicounty jail facility, funds may be used in the county in which the multicounty jail facility is located;

(4) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(5) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(6) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, or bridge fund when:

(a) there is not sufficient money in the fund against which the warrants are drawn to pay and retire the warrants; and

(b) the levying of taxes sufficient to pay and retire the warrants within a period of 3 years would, in the judgment of the board, work a hardship and be an undue burden upon the taxpayers of the county.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part); amd. Sec. 5, Ch. 447, L. 1985; amd. Sec. 3, Ch. 571, L. 2001.

7-7-2202. Authority to issue general obligation bonds to satisfy judgments. (1) The board of county commissioners of every county of the state may issue, negotiate, and sell coupon bonds on the credit of the county, as provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, when there are not sufficient funds available to pay the judgment.

(2) The resolution providing for the issuance of the bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement entered into between the board and the judgment creditor.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part); amd. Sec. 4, Ch. 213, L. 1989; amd. Sec. 37, Ch. 574, L. 2001.

7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsection (2), a county may not issue general obligation bonds for any purpose in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds the debt limitation referred to in 7-7-2101.

(2) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part); amd. Sec. 1, Ch. 332, L. 1979; amd. Sec. 1, Ch. 617, L. 1979; amd. Sec. 46, Ch. 614, L. 1981; amd. Sec. 6, Ch. 447, L. 1985; amd. Sec. 7, Ch. 695, L. 1985; amd. Sec. 3, Ch. 655, L. 1987; amd. Sec. 10, Ch. 213, L. 1989; amd. Sec. 68, Ch. 11, Sp. L. June 1989; amd. Sec. 12, Ch. 9, Sp. L. November 1993; amd. Sec. 23, Ch. 451, L. 1995; amd. Sec. 12, Ch. 570, L. 1995; amd. Sec. 2, Ch. 219, L. 1997; amd. Sec. 3, Ch. 466, L. 1997; amd. Sec. 12, Ch. 51, L. 1999; amd. Sec. 6, Ch. 285, L. 1999; amd. Sec. 24, Ch. 426, L. 1999; amd. Sec. 19, Ch. 556, L. 1999; amd. Sec. 7, Ch. 7, L. 2001; amd. Sec. 8, Ch. 29, L. 2001.

7-7-2204. Effect of issuing bonds in excess of limitations on amount. All bonds issued by any county in excess of the limitations fixed in 7-7-2203 shall be null and void.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part).

7-7-2205. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the county issuing the same, and the full faith and credit of such county are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 23, Ch. 188, L. 1931; re-en. Sec. 4630.23, R.C.M. 1935; R.C.M. 1947, 16-2037.

7-7-2206. Term of general obligation bonds. (1) Bonds issued for any of the purposes designated in 7-7-2201(1) through (4) may not be for a longer term than 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2201(5) and (6) may not be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 may not be for a longer term than 20 years.

(4) The length of the term required must be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within the county as ascertained from the last-completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county shall from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the payments are due.

(5) For purposes of 7-7-2207 and this section, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part); amd. Sec. 1, Ch. 256, L. 1989; amd. Sec. 38, Ch. 574, L. 2001; amd. Sec. 3, Ch. 451, L. 2005.

7-7-2207. Redemption of bonds. Other than refunding bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part); amd. Sec. 4, Ch. 451, L. 2005.

7-7-2208. Repealed. Sec. 2, Ch. 11, L. 1983.

History: **En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).**

7-7-2209. Types of bonds. (1) Except as provided in subsection (2), bonds issued by any county must be either amortization bonds or serial bonds.

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, without preference for amortization bonds.

History: **En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part); amd. Sec. 6, Ch. 559, L. 1993; amd. Sec. 4, Ch. 459, L. 1997.**

7-7-2210. Amortization bonds. The term "amortization bonds", as used in this part, means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary in amount from the other payments to the extent resulting from rounding amounts in the other payments.

History: **En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part); amd. Sec. 3, Ch. 423, L. 1995.**

7-7-2211. Serial bonds. The term "serial bonds", as used in this part, means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment.

History: **En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part); amd. Sec. 1, Ch. 631, L. 1983; amd. Sec. 2, Ch. 256, L. 1989; amd. Sec. 5, Ch. 451, L. 2005.**

7-7-2212. Citizen bonds authorized. (1) A county authorized to sell general obligation bonds under this chapter may issue and sell a portion of the bonds in denominations of less than $5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates.

(2) Bonds issued under 7-7-2212 through 7-7-2215 may be known as "citizen bonds".

(3) Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds.

(4) An officer, employee, contracted financial consultant, or contracted adviser employed or retained by a county selling citizen bonds may not purchase those bonds.

History: **En. Sec. 1, Ch. 559, L. 1993.**

7-7-2213. Citizen bonds — procedural requirements prior to issuance. Prior to issuing citizen bonds, a county shall make available to interested investors:

(1) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; and

(2) application forms for the purchase of citizen bonds that must specify at a minimum:

(a) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(b) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(c) the denominations of the bonds and the maximum amount of the bonds that one buyer may purchase;

(d) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

(e) the provision made for the transfer of ownership of outstanding bonds.

History: **En. Sec. 2, Ch. 559, L. 1993; amd. Sec. 2, Ch. 94, L. 2007.**

7-7-2214. Citizen bonds — procedure when issue not fully subscribed. If an entire issue of bonds is not fully subscribed during the period of time that the county has set for the sale of the bonds, the citizen bonds may be sold in the manner permitted for other county general obligation bonds.

History: En. Sec. 3, Ch. 559, L. 1993.

7-7-2215. Zero-coupon bonds and capital appreciation bonds. The terms "zero-coupon bonds" and "capital appreciation bonds", as used in this part, mean those forms of bonds that do not make periodic interest payments but, rather, are sold at a discount from their face value.

History: En. Sec. 4, Ch. 559, L. 1993.

7-7-2216 through 7-7-2220 reserved.

7-7-2221. Issuance of certain general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line, as set forth in 7-7-2201(5); and

(2) funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, as set forth in 7-7-2202 and 15-1-402.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part); amd. Sec. 5, Ch. 213, L. 1989.

7-7-2222. Procedure to issue bonds without election. (1) In order to issue bonds for any of the purposes referred to in 7-7-2221 and 7-7-2311, it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, and give notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election and to then follow the procedure prescribed in this part for the sale and issuance of such bonds.

(2) All bonds sold without submitting the question of their issue to an election, as authorized in 7-7-2221 and 7-7-2311, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2223. Election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 may not be issued unless authorized at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, at a special election held in conjunction with a regular or primary election, or at a general election at which the question of issuing the bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) A bond election may not be called unless the board of county commissioners:

(a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); or

(b) receives a petition, delivered and certified by the election administrator, asking that the election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county.

History: En. Secs. 7, 8, Ch. 188, L. 1931; re-en. Secs. 4630.7, 4630.8, R.C.M. 1935; amd. Secs. 12, 13, Ch. 158, L. 1971; amd. Secs. 1, 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(1), 16-2022(part); amd. Sec. 307, Ch. 571, L. 1979; amd. Sec. 1, Ch. 89, L. 1983; amd. Sec. 29, Ch. 387, L. 1995; amd. Sec. 1, Ch. 234, L. 1997.

Cross-References

Challenges to local government bond election, 7-7-105.

7-7-2224. Form and contents of petition. (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition.

(2) The petition shall be in the form provided in Title 13, chapter 27.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 308, Ch. 571, L. 1979.

7-7-2225. Filing of petition with election administrator — certificate. (1) The completed petition for an election on issuing bonds must be filed with the election administrator. The election administrator shall, within 15 days, carefully examine the petition and the county records showing the qualifications of the petitioners and attach a certificate, under official signature and the seal of the administrator's office.

(2) The certificate must set forth:

(a) the total number of individuals who are registered electors;

(b) which and how many of the individuals whose names are subscribed to the petition have all of the qualifications required of signers of a petition;

(c) whether the qualified signers constitute more or less than 20% of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 309, Ch. 571, L. 1979; amd. Sec. 501, Ch. 61, L. 2007.

Cross-References

Local Election Administrator, Title 13, ch. 1, part 3.

7-7-2226. Delivery of certified petition to board of county commissioners. (1) After completing the certificate required by 7-7-2225, the election administrator shall deliver the certified petition to the board of county commissioners.

(2) When the petition has been filed with the election administrator and the administrator has found that it has a sufficient number of signers qualified to sign it, the administrator shall place the petition before the board at its first meeting held after certification.

History: (1)En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; Sec. 16-2022, R.C.M. 1947; (2)En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; Sec. 16-2023, R.C.M. 1947; R.C.M. 1947, 16-2022(3), 16-2023(part); amd. Sec. 310, Ch. 571, L. 1979; amd. Sec. 502, Ch. 61, L. 2007.

Cross-References

Local Election Administrator, Title 13, ch. 1, part 3.

7-7-2227. Examination of petition — resolution calling for election. (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make any other investigation that it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution that contains the provisions of subsection (2) plus the essential facts in regard to the petition and its filing and presentation.

(2) The resolution must:

(a) recite the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, or that is held in conjunction with a regular or primary election and that the board may call for that purpose.

(3) Whenever a board of county commissioners initiates a resolution in accordance with the provisions of 7-7-2223, the resolution must contain the provisions of subsection (2).

History: En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; R.C.M. 1947, 16-2023(part); amd. Sec. 311, Ch. 571, L. 1979; amd. Sec. 2, Ch. 89, L. 1983; amd. Sec. 30, Ch. 387, L. 1995; amd. Sec. 2, Ch. 234, L. 1997.

7-7-2228. Time of holding election on question of issuing bonds. The bond election required by 7-7-2223 may not be held any sooner than 90 days after receipt of the petition by the county commissioners and must be held no later than the first general election following the 90-day period.

History: **En. Sec. 7, Ch. 188, L. 1931; re-en. Sec. 4630.7, R.C.M. 1935; amd. Sec. 12, Ch. 158, L. 1971; amd. Sec. 1, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(2); amd. Sec. 312, Ch. 571, L. 1979.**

7-7-2229. Notice of election. (1) Whether the election is held at the general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, separate notice of the election must be given.

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to be issued;

(iii) the purpose of the issue;

(iv) the term of years through which the bonds are to be paid; and

(v) other information regarding the holding of the election and the bonds proposed to be issued that the board may consider proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount for each purpose must be separately stated.

(3) The notice must be published as provided in 13-1-108.

History: **En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part); amd. Sec. 313, Ch. 571, L. 1979; amd. Sec. 31, Ch. 387, L. 1995; amd. Sec. 3, Ch. 234, L. 1997.**

Cross-References

General election and special election defined, 13-1-101.

7-7-2230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part).**

7-7-2231. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part).**

7-7-2232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **(1)En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R.C.M. 1921; re-en. Sec. 4722, R.C.M. 1935; Sec. 16-2306, R.C.M. 1947; (2)En. Sec. 11, Ch. 188, L. 1931; re-en. Sec. 4630.11, R.C.M. 1935; Sec. 16-2025, R.C.M. 1947; R.C.M. 1947, 16-2025(part), 16-2306(part).**

7-7-2233. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 12, Ch. 188, L. 1931; re-en. Sec. 4630.12, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971; R.C.M. 1947, 16-2026(part).**

7-7-2234. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 12, Ch. 188, L. 1931; re-en. Sec. 4630.12, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971; R.C.M. 1947, 16-2026(part).**

7-7-2235. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **(1)En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R.C.M. 1921; re-en. Sec. 4722, R.C.M. 1935; Sec. 16-2306, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 188, L. 1931; re-en. Sec. 4630.11, R.C.M. 1935; Sec. 16-2025, R.C.M. 1947; R.C.M. 1947, 16-2025(part), 16-2306(part).**

7-7-2236. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).**

7-7-2237. Percentage of electors required to authorize bond issue. Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(6) when the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected.

History: En. Sec. 13, Ch. 188, L. 1931; re-en. Sec. 4630.13, R.C.M. 1935; R.C.M. 1947, 16-2027; amd. Sec. 314, Ch. 571, L. 1979; amd. Sec. 1, Ch. 336, L. 1989; amd. Sec. 32, Ch. 387, L. 1995; amd. Sec. 4, Ch. 234, L. 1997.

7-7-2238. Resolution to sell bonds. (1) If a sufficient percentage of the qualified electors entitled to vote at an election voted on the question and a sufficient percentage of votes were cast in favor of issuing bonds as provided in 7-7-2237, the board of county commissioners shall adopt a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any; and

(g) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The board may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The board of county commissioners may fix the minimum price for the bonds in an amount less than the principal amount of the bonds, which may not be less than 97% of the principal amount, if the board determines that a sale at that price is in the best interests of the county.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part); amd. Sec. 2, Ch. 336, L. 1989; amd. Sec. 7, Ch. 559, L. 1993; amd. Sec. 4, Ch. 423, L. 1995.

7-7-2239. Rescission of resolution authorizing bond issue. If none of said bonds have been sold and issued within 3 years from the date of the bonding election and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2240 through 7-7-2250 reserved.

7-7-2251. Form of notice of sale of bonds. (1) The notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of.... County, state of Montana, that the board will on the.... day of...., ..., at the hour of.... ....m., at the office of the board in the courthouse in the (town or city) of.... in the said county, sell to the highest and best bidder for cash general obligation bonds of the county in the principal amount of.... dollars ($....) for the purpose of.....

The bonds will be issued and sold in the aggregate principal amount of.... dollars ($....) and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the board of county commissioners). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of...., ..., will pay interest commencing on the.... day of.... (month), ..., will be payable semiannually on the.... day of.... (month) and.... (month) in each year thereafter, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than $...., with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed ....% a year.) The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of.... dollars ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the board of county commissioners and delivered to the county clerk.

ATTEST: ....

(Presiding officer, Board of County Commissioners)
of............. County, Montana ....

....
(Clerk of the Board of County Commissioners)
of........... County, Montana
Address............., Montana

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-2212 through 7-7-2215.

History: En. Sec. 15, Ch. 188, L. 1931; re-en. Sec. 4630.15, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2029; amd. Sec. 1, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 2, Ch. 631, L. 1983; amd. Sec. 8, Ch. 559, L. 1993; amd. Sec. 5, Ch. 423, L. 1995.

7-7-2252. Publication of notice of sale of bonds. The board of county commissioners shall publish notice of the bond sale in the official newspaper of the county as provided in 17-5-106. The board may in its discretion publish the notice or a summary of the notice in any financial newspapers published in the city of New York or Chicago.

History: En. Sec. 16, Ch. 188, L. 1931; re-en. Sec. 4630.16, R.C.M. 1935; R.C.M. 1947, 16-2030; amd. Sec. 2, Ch. 173, L. 1987; amd. Sec. 6, Ch. 423, L. 1995.

Cross-References

Payment of certain costs by Board of Investments, 17-5-1644.

7-7-2253. Repealed. Sec. 5, Ch. 6, L. 1993.

History: En. Sec. 17, Ch. 188, L. 1931; re-en. Sec. 4630.17, R.C.M. 1935; amd. Sec. 3, Ch. 326, L. 1974; R.C.M. 1947, 16-2031.

7-7-2254. Procedure for sale of bonds. (1) The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The board shall accept the bid that it judges most advantageous to the county. The board may reject any bids and sell the bonds at private sale if the board considers it in the best interests of the county.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, preparation of the bonds, or negotiating the sale of the bonds.

History: En. Sec. 18, Ch. 188, L. 1931; re-en. Sec. 4630.18, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1971; R.C.M. 1947, 16-2032; amd. Sec. 3, Ch. 631, L. 1983; amd. Sec. 7, Ch. 423, L. 1995.

7-7-2255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the board of county commissioners shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization bonds or serial bonds, providing the manner of execution of the bonds, and if applicable, specifying whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

(2) Each county bond and each coupon attached to the bond must be signed by or bear the facsimile signatures of the presiding officer of the board of county commissioners and the county treasurer and must be attested by the county clerk, provided that one signature of a county official or the bond registrar must be a manual signature. Each bond may have the county seal or its facsimile imprinted on the bond.

History: En. Sec. 19, Ch. 188, L. 1931; re-en. Sec. 4630.19, R.C.M. 1935; amd. Sec. 8, Ch. 260, L. 1959; R.C.M. 1947, 16-2033; amd. Sec. 8, Ch. 423, L. 1995; amd. Sec. 2, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 489 in (1) at end inserted language concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds; and made minor changes in style. Amendment effective May 14, 2009.

7-7-2256. Printing of bonds. (1) Except as provided in subsection (2), the county clerk, under the direction of the board, shall have the bonds printed or lithographed at the expense of the county at lowest commercial rates. The bonds may be typewritten with the purchaser's consent.

(2) A purchaser of the bonds may furnish the bonds to the county for execution if the execution is done at the purchaser's own expense and without expense to the county.

History: En. Sec. 20, Ch. 188, L. 1931; re-en. Sec. 4630.20, R.C.M. 1935; R.C.M. 1947, 16-2034; amd. Sec. 9, Ch. 423, L. 1995.

7-7-2257. Registration of bonds. (1) When executed by the officers of the county, the bonds must be registered by the county treasurer before being delivered to the purchaser.

(2) The registration must show:

(a) the date of issue, the maturities of the bonds subject to early redemption and the redemption dates, and the date when the bonds become due; and

(b) the amount of all payments of both principal and interest required on each bond, with the dates when the payments must be paid.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part); amd. Sec. 10, Ch. 423, L. 1995.

7-7-2258. Copy of bond to be kept by county treasurer. The county clerk shall deliver to the county treasurer an unsigned and canceled printed copy of a bond of each issue, as issued and registered, to be preserved in the treasurer's office.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part); amd. Sec. 503, Ch. 61, L. 2007.

7-7-2259. Delivery of bonds. The county treasurer shall deliver the bonds to the purchaser upon receiving full payment for the bonds.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part); amd. Sec. 5, Ch. 581, L. 1987; amd. Sec. 11, Ch. 423, L. 1995.

7-7-2260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part).

7-7-2261. Maintenance of accounts for bond issues. (1) The county treasurer of each county shall keep in the county's books a special and separate sinking fund account for each series or issue of outstanding bonds, including citizen bonds as provided in 7-7-2212 through 7-7-2215, issued by the county. Each fund must at all times show the exact condition of the bonds.

(2) All taxes collected for interest and principal on county bonds must be placed to the credit of the sinking fund for which the taxes were levied.

(3) Interest from investment of money in a sinking fund account may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

(4) The sinking fund must be administered as provided in 7-7-123, 7-7-124, and 7-7-2270.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part); amd. Sec. 3, Ch. 256, L. 1979; amd. Sec. 9, Ch. 559, L. 1993.

7-7-2262. Payment of principal and interest. The county treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as the interest and principal become due and at the place where the bonds are payable, upon presentation and surrender of the coupon or bond to be paid.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part); amd. Sec. 12, Ch. 423, L. 1995.

7-7-2263. Interest on late payments of principal and interest on bonds held by state. Any and all installments of interest or principal on bonds held by the state and not promptly paid at the office of the state treasurer when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part).

7-7-2264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any county has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the county treasurer of such county shall, between the first and fifth days of August in each year while such bonds or any thereof remain outstanding and unpaid, make out and deliver to the board of county commissioners of such county a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-2265.

History: En. Sec. 24, Ch. 188, L. 1931; re-en. Sec. 4630.24, R.C.M. 1935; R.C.M. 1947, 16-2038.

7-7-2265. Tax levy for payment of bonds. (1) The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax upon all taxable property in the county for the payment of interest on and principal of each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other series or issue of bonds.

(2) Except as provided in subsection (3), the levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days after the fiscal year, as shown by the treasurer's statement provided by 7-7-2264. If no part of the principal of the bonds become due and payable within that time, then the tax levy must be high enough to:

(a) raise an amount sufficient to pay all interest that will become due and payable during the current fiscal year or within 90 days after the fiscal year; and

(b) place in the sinking fund for the issue or series of bonds, for the payment of the principal when it becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds was originally issued by the number of years for which the series or issue was originally issued to run.

(3) The annual levies made for the purpose of paying off bonds that do not provide for periodic interest payments but, rather, are sold at a discount from their face value, as provided in 7-7-2212 through 7-7-2215, must be actuarially sufficient so that at the time for redemption, there is an amount in the sinking fund sufficient to redeem the bonds.

History: En. Sec. 25, Ch. 188, L. 1931; re-en. Sec. 4630.25, R.C.M. 1935; R.C.M. 1947, 16-2039; amd. Sec. 10, Ch. 559, L. 1993.

7-7-2266. Procedure in case of insufficient tax levy — individual liability of county commissioners. (1) If the board of county commissioners of any county shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-2265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such county may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of such county to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-2265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such board, at the next meeting thereof for the purpose of making and fixing county levies, to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board and shall not be a charge against such county.

History: En. Sec. 26, Ch. 188, L. 1931; re-en. Sec. 4630.26, R.C.M. 1935; R.C.M. 1947, 16-2040.

Cross-References

Writ of mandate, Title 27, ch. 26.

7-7-2267. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2268. Redemption of bonds. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds, or principal installments in the case of amortization bonds, of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the county treasurer shall apply the available money in redemption of as many of the bonds, or principal installments in the case of amortization bonds, as the available money will pay and redeem to a redemption date on or before the next interest payment date, as fixed by the county treasurer.

(2) The county treasurer shall give notice, by mail sent at least 30 days before the redemption date, to the holder of the bonds, if ownership of the bonds is registered or is otherwise known to the treasurer, to the registered owners at their addresses as they appear in the bond registration books, and to any bank or financial institution at which the bonds are payable that the bonds or principal installments will be paid and redeemed on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment not affected by the defect or failure. If the ownership of the bonds is not registered, the county treasurer shall also publish in the official newspaper of the county or other newspaper designated in the resolution authorizing the issuance of the bonds once, not less than 30 days prior to the redemption date, a notice that the bonds or principal installments have been called for redemption and will be paid in full on the redemption date. If actual notice of the call has been received, the holder of a bond may waive published or mailed notice.

(3) If the bonds or principal installments are payable at a bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the redemption date, an amount sufficient to pay and redeem the bonds or principal installments with interest accrued on the bonds or principal installments. If the bonds are not presented for payment and redemption on the redemption date, interest ceases on that date if the funds for payment and redemption have been deposited in a bank or financial institution.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part); amd. Sec. 1, Ch. 453, L. 1993; amd. Sec. 13, Ch. 423, L. 1995.

7-7-2269. Order of redemption of bonds. All bonds or principal installments of amortization bonds to be redeemed under the provisions of 7-7-2268 may be paid and redeemed in the order that the county treasurer selects, consistent with the provisions of the resolution authorizing the issuance of the bonds.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part); amd. Sec. 2, Ch. 453, L. 1993; amd. Sec. 14, Ch. 423, L. 1995.

7-7-2270. Authority to purchase outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of the principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state of Montana and are not subject to redemption, the county treasurer, at the direction of the board of county commissioners, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the board may feel justified in paying, not in any case exceeding 5%.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part); amd. Sec. 4, Ch. 256, L. 1979.

7-7-2271. Repealed. Sec. 7, Ch. 256, L. 1979.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part).

7-7-2272. Cancellation of bonds and coupons. (1) (a) All bonds and interest coupons paid by the county treasurer from time to time must be canceled by the treasurer, and after cancellation, the treasurer shall deliver the bonds and coupons to the county clerk, with a report showing the numbers of bonds and the amounts paid as principal and interest. The county treasurer shall enter on the record of the registration of the bonds the date of the payment of the bonds and the coupons attached to the bonds.

(b) The county clerk shall exhibit the bonds and coupons, with the report, to the board of county commissioners at its next regular meeting.

(2) (a) When any bonds have been or are purchased with any sinking and interest fund money under the provisions of 7-7-2270, the bonds, with attached interest coupons, if not in the possession of the county treasurer, must be immediately delivered to the treasurer. The county treasurer shall at once endorse across the face of each bond the word "Paid" and the date and shall sign the endorsement. The treasurer shall, without detaching the coupons, cancel each interest coupon attached to the bonds by endorsing across the face of the coupon the word "Canceled" and the date and shall sign the endorsement. After making the endorsements on the bonds and coupons, the county treasurer shall enter on the record of registration the date the bonds and coupons were endorsed as being paid and canceled, with the numbers and amounts of the bonds and coupons and the dates when the bonds and coupons would have become due and payable if they had not been purchased. The county treasurer shall then deliver the bonds, with the canceled coupons attached, to the county clerk, with a report showing the numbers of the bonds and amount paid on the purchase of the bonds.

(b) The county clerk shall exhibit the bonds, with attached coupons and report, to the board at its next regular session.

History: (1)En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; Sec. 16-2045, R.C.M. 1947; (2)En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; Sec. 16-2044, R.C.M. 1947; R.C.M. 1947, 16-2044(part), 16-2045(part); amd. Sec. 504, Ch. 61, L. 2007.

7-7-2273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the county treasurer shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the county clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The county clerk shall exhibit such warrants and bonds, with such report, to the board of county commissioners at the next regular meeting thereof.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

7-7-2274. Closing of accounts and transfer of money to other accounts. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest or not used as provided in 7-7-2261, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part).

7-7-2275. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. Sec. 32, Ch. 188, L. 1931; re-en. Sec. 4630.32, R.C.M. 1935; amd. Sec. 24, Ch. 234, L. 1971; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2046.

Part 23
County Refunding General Obligation Bonds

7-7-2301. Authority to issue refunding general obligation bonds. (1) The board of county commissioners of a county may issue, negotiate, and sell coupon bonds on the credit of the county, as provided in part 22 and this part, for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

(a) there are not sufficient funds available to pay the bonds or there is a reduction in debt service as a result of issuing refunding bonds pursuant to 7-7-2304; and

(b) it is considered in the best interests of the county to refund the bonds.

(2) (a) The board has the authority to negotiate with the holders of the bonds of the county for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest on the bonds as full payment and satisfaction of the bonds, to enter into the agreement or agreements, and to issue refunding bonds for the amount agreed upon whenever:

(i) the total indebtedness of a county exceeds 0.3% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes; and

(ii) the board of county commissioners of the county determines that the county is unable to pay and discharge the indebtedness in full.

(b) These bonds may be issued in more than one series if the circumstances require, and each series may be either amortization bonds or serial bonds. The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part); amd. Sec. 15, Ch. 423, L. 1995; amd. Sec. 9, Ch. 29, L. 2001.

7-7-2302. Applicability of certain other bond provisions. (1) The provisions of 7-7-2203 through 7-7-2207, 7-7-2209 through 7-7-2211, 7-7-2222, 7-7-2255 through 7-7-2266, 7-7-2268 through 7-7-2270, and 7-7-2272 through 7-7-2274 apply to refunding bonds issued under this part; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251, 7-7-2252, and 7-7-2254.

(2) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 7-7-2211.

History: En. by Code Commissioner, 1979; amd. Sec. 1, Ch. 647, L. 1983; amd. Sec. 15, Ch. 370, L. 1987; amd. Sec. 1, Ch. 6, L. 1993; amd. Sec. 16, Ch. 423, L. 1995.

7-7-2303. Term of refunding general obligation bonds. (1) (a) The following term limitations apply to all bonds issued under 7-7-2301(1). Except as provided in subsection (1)(b), bonds may not be issued for a longer term than 10 years.

(b) If the unexpired term of the bonds to be refunded is more than 10 years, the refunding bonds may be issued for the unexpired term.

(2) Bonds issued for any of the purposes designated in 7-7-2301(2) may not be for a longer term than 20 years.

(3) The length of the term required must be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within the county as ascertained from the last-completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county shall from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the payments are due.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part); amd. Sec. 39, Ch. 574, L. 2001.

7-7-2304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county. Variable rate refunding bonds may also be issued if the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part); amd. Sec. 1, Ch. 54, L. 1989; amd. Sec. 17, Ch. 423, L. 1995; amd. Sec. 1, Ch. 277, L. 2003; amd. Sec. 6, Ch. 451, L. 2005.

7-7-2305 through 7-7-2310 reserved.

7-7-2311. Issuance of refunding general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) refunding, paying, and redeeming optional, redeemable, or maturing bonds as set forth in 7-7-2301(1); and

(2) refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction as set forth in 7-7-2301(2).

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the county treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds to be so funded or refunded.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

7-7-2313 through 7-7-2315 reserved.

7-7-2316. Advance refunding bonds. (1) The board of county commissioners may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state.

(2) Except as provided in subsection (3), the funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on those dates and bear interest at those rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for

redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(3) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(4) The escrow account is irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the sinking fund account for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation.

History: En. Sec. 7, Ch. 647, L. 1983; amd. Sec. 2, Ch. 277, L. 2003.

Cross-References

Cities — advance refunding bonds, 7-7-4316.

Issuance of school refunding bonds without election, 20-9-412.

Part 24
County Loans

7-7-2401. Authorization to borrow money. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to borrow money upon the credit of the county to meet current expenses if the county revenue is insufficient.

History: En. Subd. 26, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.25, R.C.M. 1935; R.C.M. 1947, 16-1028.

7-7-2402. Election required to borrow money — exceptions. (1) Except as provided in subsection (4), the board of county commissioners may not borrow money for any of the purposes mentioned in this title or for any single purpose in an amount exceeding the limits set in subsection (2) without:

(a) first submitting the question of a loan to a vote of the electors of the county; and

(b) obtaining the approval of a majority of the electors of the county.

(2) Based upon the taxable valuation of a county and not exceeding the limits on county indebtedness established in 7-7-2101, a county may borrow the following amounts without a vote of the electorate:

(a) up to $1 million if the county's taxable value is less than $50 million;

(b) up to $1.5 million if the county's taxable value is between $50 million and $100 million; and

(c) up to $2 million if the county's taxable valuation is greater than $100 million.

(3) If a majority of the votes cast are in favor of the loan, then the board of county commissioners may enter into the loan, issuing bonds or otherwise as is in the best interests of the county.

(4) It is not necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: (1), (3)En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919; re-en. Sec. 4717, R.C.M. 1921; re-en. Sec. 4717, R.C.M. 1935; Sec. 16-2301, R.C.M. 1947; (2)En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R.C.M. 1921; re-en. Sec. 4721, R.C.M. 1935; Sec. 16-2305, R.C.M. 1947; R.C.M. 1947, 16-2301, 16-2305; amd. Sec. 10, Ch. 16, L. 1991; amd. Sec. 2, Ch. 227, L. 1997; amd. Sec. 1, Ch. 236, L. 2007.

7-7-2403. Determination of amount of loan. Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

History: En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R.C.M. 1921; re-en. Sec. 4718, R.C.M. 1935; R.C.M. 1947, 16-2302.

7-7-2404. Notice of election. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).

7-7-2405. Form of ballots. There must be written or printed on the ballots the words "For the loan" and "Against the loan", and in voting, the elector shall vote for the proposition that the elector prefers by making an X opposite the proposition.

History: En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R.C.M. 1921; re-en. Sec. 4720, R.C.M. 1935; R.C.M. 1947, 16-2304; amd. Sec. 505, Ch. 61, L. 2007.

7-7-2406. Conduct of election and canvass of results. The election must be held and conducted and the returns must be made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).

7-7-2407. Restriction on use of loan proceeds. All money borrowed by or on behalf of any county must be used only for the purpose specified by law.

History: En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907; re-en. Sec. 4446, R.C.M. 1921; Cal. Pol. C. Sec. 4005; re-en. Sec. 4446, R.C.M. 1935; R.C.M. 1947, 16-806; amd. Sec. 18, Ch. 423, L. 1995.

Part 25
County Revenue Bonds

7-7-2501. Authority to issue revenue bonds — refunding revenue bonds. (1) A county may issue county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity enumerated in chapter 16, part 21, of this title or in Title 75, chapter 10, part 1. Revenue from the project for which the bonds are issued is the only revenue upon which a lien under the provisions of 7-7-4431 may apply. A lien may not attach to other revenue or other property within the county.

(2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the method provided in either part 45 or part 46 of chapter 7.

(3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7, "municipal" is considered to refer to the county and "governing body" is considered to refer to the board of county commissioners whenever the board of county commissioners is acting pursuant to subsection (1).

(4) If applicable, the county shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: En. Sec. 1, Ch. 472, L. 1983; amd. Sec. 4, Ch. 770, L. 1991; amd. Sec. 51, Ch. 423, L. 1995; amd. Sec. 3, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 489 inserted (4) concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds. Amendment effective May 14, 2009.

Parts 26 through 40 reserved

Part 41
General Provisions Related to Municipalities

7-7-4101. Purposes for which indebtedness may be incurred. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit of the city or town, by borrowing money, issuing bonds, issuing notes, entering into leases, entering into lease-purchase agreements, or entering into installment purchase contracts for the following purposes:

(1) acquiring land for and designing and erecting public buildings;

(2) acquiring land for and designing and constructing sewers, sewage treatment and disposal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) designing and constructing bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) acquiring, opening, or widening any street and improving the street by constructing, reconstructing, and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost relating to the project;

(6) purchasing or leasing fire apparatus, street and other equipment, and personal property, including without limitation, vehicles, telephone systems, and photocopy and office equipment, including computer hardware and software;

(7) building, purchasing, designing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(8) funding outstanding warrants and maturing bonds; and

(9) repaying tax protests lost by the city, town, or other municipal corporation.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 6, Ch. 213, L. 1989; amd. Sec. 3, Ch. 139, L. 1999.

7-7-4102. Investment of certain bond proceeds. (1) Whenever the city or town has under its control any money realized from the sale of bonds, for which there is no immediate demand and which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, the city or town council is authorized in their discretion to direct the city treasurer or town clerk to make such investments.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(2).

7-7-4103. General qualifications to vote on questions of municipal indebtedness. (1) Registered electors of the city, town, or other municipal corporation may vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) An elector, otherwise qualified, may not be denied the right to vote because the polling place for a general election for the precinct in which the elector resides and is entitled to vote lies within another city, town, or other municipal corporation.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part); amd. Sec. 2, Ch. 212, L. 1979; amd. Sec. 506, Ch. 61, L. 2007.

7-7-4104. Incurrence of certain general obligations. (1) A municipality may enter into or incur an obligation for any public or governmental purpose, including the purposes set forth in 7-7-4101. An obligation may be in the form of bonded indebtedness, note indebtedness, a lease, a lease-purchase agreement, an installment purchase contract, or other legal form. An obligation constitutes a general obligation of the municipality but is not secured by a pledge of the taxing power of the municipality.

(2) The obligation provided for in subsection (1) may be authorized by a resolution adopted by the governing body of the municipality. The resolution must establish the terms, covenants, and conditions of the obligation. It is not necessary to submit the question of incurring the obligation to the electors of the municipality. The obligation may be incurred or sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The obligation does not constitute indebtedness for the purpose of statutory debt limitations.

(3) An obligation may be issued only if:

(a) the principal amount of the obligation does not exceed 10% of the general fund budget of the municipality in each of the 2 immediately preceding fiscal years;

(b) at the time the obligation is to be incurred, the debt services in the current or in any future fiscal year on the obligation and any other outstanding obligation issued pursuant to this section do not exceed 2% of the revenue deposited in the general fund of the municipality in each of the 2 immediately preceding fiscal years; and

(c) the term of the obligation does not exceed 20 years.

(4) The obligation must clearly state that it is not secured by a pledge of the municipality's taxing power but that it is payable solely from revenue in the general fund in any fiscal year that is pledged to the payment of the obligation.

(5) In order to secure the payment of principal of or interest on an obligation and related charges, the municipality may grant a first lien on all revenue collected and deposited in the general fund subject to or on a parity with any prior pledges. The municipality may establish other funds and accounts for obligations issued under this section that may be necessary to provide for the priority and segregation of revenue deposited in the general fund and pledged to the payment of obligations. For purposes of this section, related charges include the fees and expenses of registrars and paying agents and the amounts, if any, that must be rebated to the federal government under 26 U.S.C. 148.

(6) All obligations incurred under this section are legal and valid obligations of the municipality issuing the obligations, and the general credit of the municipality is irrevocably pledged for the prompt payment of both the principal of and interest on the obligations as they become due. However, the municipality may not be obligated to levy taxes for the payment of any obligation or interest on the obligation.

(7) The powers conferred on a municipality by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local law. To the extent that the provisions of this section are inconsistent with provisions of any other general, special, or local law, the provisions of this section are controlling.

History: En. Sec. 4, Ch. 139, L. 1999; amd. Sec. 10, Ch. 453, L. 2005.

Cross-References

Taxation — public and governmental purposes, 7-6-2527.

7-7-4105 through 7-7-4110 reserved.

7-7-4111. Renumbered 7-7-132. Code Commissioner, 1995.

7-7-4112. Renumbered 7-7-133. Code Commissioner, 1995.

7-7-4113. Renumbered 7-7-134. Code Commissioner, 1995.

Part 42
Municipal General Obligation Bonds

7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as provided in 7-7-4202, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town.

History: En. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; R.C.M. 1947, 11-2303; amd. Sec. 2, Ch. 617, L. 1979; amd. Sec. 47, Ch. 614, L. 1981; amd. Sec. 11, Ch. 213, L. 1989; amd. Sec. 13, Ch. 570, L. 1995; amd. Sec. 25, Ch. 426, L. 1999; amd. Sec. 20, Ch. 556, L. 1999; amd. Sec. 10, Ch. 29, L. 2001; amd. Sec. 3, Ch. 187, L. 2007.

7-7-4202. Special provisions relating to water and sewer systems. (1) A city or town may incur an additional indebtedness by borrowing money or issuing bonds beyond the amount authorized in 7-7-4201 for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town that owns and controls the water supply and water system and devotes the revenue from the water supply and water system to the payment of the debt.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both of the purposes, including all indebtedness that is contracted and that is unpaid or outstanding, may not in the aggregate exceed 55% over and above the debt limitation referred to in 7-7-4201.

History: Ap. p. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; Sec. 11-2303, R.C.M. 1947; Ap. p. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; Sec. 11-966, R.C.M. 1947; R.C.M. 1947, 11-966(part), 11-2303(part); amd. Sec. 3, Ch. 617, L. 1979; amd. Sec. 48, Ch. 614, L. 1981; amd. Sec. 14, Ch. 570, L. 1995; amd. Sec. 26, Ch. 426, L. 1999; amd. Sec. 21, Ch. 556, L. 1999; amd. Sec. 11, Ch. 29, L. 2001.

7-7-4203. What constitutes a single purpose. The following shall be deemed a single purpose:

(1) acquiring land for a site for a public building or for any other public use and constructing, erecting, or acquiring by purchase any building thereon and furnishing and equipping the same;

(2) acquiring of rights-of-way for street or other purposes, making improvements thereon, or constructing sewers or water pipelines;

(3) procuring of a water supply and constructing or acquiring of a water system and improving the same if necessary.

History: En. Sec. 2, Ch. 160, L. 1931; re-en. Sec. 5278.2, R.C.M. 1935; R.C.M. 1947, 11-2302.

7-7-4204. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the city or town issuing the same, and the full faith and credit of such city or town are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 20, Ch. 160, L. 1931; re-en. Sec. 5278.20, R.C.M. 1935; R.C.M. 1947, 11-2320.

7-7-4205. Term of general obligation bonds. (1) Bonds for any purpose may not be issued for a longer term than 20 years.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies taxes to pay principal and interest on the bonds.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part); amd. Sec. 3, Ch. 256, L. 1989.

7-7-4206. Redemption of bonds. Other than refunding bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the city or town on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be recited in the bonds.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part); amd. Sec. 7, Ch. 451, L. 2005.

7-7-4207. Repealed. Sec. 2, Ch. 11, L. 1983.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4208. Types of general obligation bonds. (1) Except as provided in subsection (2), bonds issued by any city or town must be either amortization bonds or serial bonds.

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, without preference for amortization bonds.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part); amd. Sec. 6, Ch. 511, L. 1989; amd. Sec. 5, Ch. 459, L. 1997.

7-7-4209. Amortization bonds. The term "amortization bonds", as used in this part, means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date.

However, the payment on the initial payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary in amount from the other payments to the extent resulting from rounding amounts in the other payments.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part); amd. Sec. 19, Ch. 423, L. 1995.

7-7-4210. Serial bonds. The term "serial bonds", as used in this part, means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part); amd. Sec. 4, Ch. 631, L. 1983; amd. Sec. 4, Ch. 256, L. 1989; amd. Sec. 8, Ch. 451, L. 2005.

7-7-4211. Citizen bonds authorized. (1) A city or town authorized to sell general obligation bonds under this chapter may issue and sell any portion of the bond in denominations of less than $5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates.

(2) Citizen bonds may be issued for any purpose for which a city or town may issue general obligation bonds.

(3) Bonds issued under 7-7-4211 through 7-7-4213 may be known as "citizen bonds".

(4) An officer, employee, contracted financial consultant, or contracted advisor employed or retained by a city or town selling citizen bonds may not purchase those bonds.

History: En. Sec. 1, Ch. 511, L. 1989.

7-7-4212. Citizen bonds — procedural requirements prior to issuance. Prior to issuing citizen bonds, a city or town shall make available to interested investors:

(1) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; and

(2) application forms for the purchase of citizen bonds, which must specify at a minimum:

(a) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(b) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(c) the denominations of the bonds and the maximum amount of bonds that any one buyer may purchase;

(d) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

(e) the provision made for the transfer of ownership of outstanding bonds.

History: En. Sec. 2, Ch. 511, L. 1989; amd. Sec. 3, Ch. 94, L. 2007.

7-7-4213. Citizen bonds — procedure when issue not fully subscribed. If an entire issue of unsubscribed bonds is not fully subscribed during the period of time that the city or town has set for the sale of the bonds, the citizen bonds may be sold in the manner permitted for other municipal general obligation bonds.

History: En. Sec. 3, Ch. 511, L. 1989.

7-7-4214. Zero-coupon and capital appreciation bonds. The terms "zero-coupon bonds" and "capital appreciation bonds", as used in Title 7, chapter 7, part 42, mean those forms of bonds that make no periodic interest payments but rather are sold at a discount from their face value.

History: En. Sec. 4, Ch. 511, L. 1989.

7-7-4215 through 7-7-4220 reserved.

7-7-4221. Election on question of incurring indebtedness — exception. (1) Except as provided in subsection (2) and 15-1-402, whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301; amd. Sec. 5, Ch. 212, L. 1979; amd. Sec. 315, Ch. 571, L. 1979; amd. Sec. 7, Ch. 213, L. 1989.

7-7-4222. Election required for bond issue relating to water and sewer systems. Bonds backed by the full faith and credit of the city or town and issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewer system may not be issued until the proposition has been submitted to a vote and the majority vote cast in favor thereof.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 1, Ch. 73, L. 1993.

7-7-4223. Procedure to call election on question of bonded indebtedness. An election on the question of issuing bonds may be called by the city or town council or commission on its passage of the necessary resolution, as hereinafter provided, or after there has been presented to the council or commission a petition asking that such election be held and question submitted.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4224. Petition to request election. (1) A petition asking that an election be held on the question of issuing bonds must be signed by not less than 20% of the qualified electors of the city or town. The petition must give the street and house number, if any, and the voting precinct of each person signing the petition.

(2) Each petition for the calling of an election to vote upon the question of issuing bonds must plainly and clearly state the purpose or purposes for which it is proposed to issue bonds and must contain an estimate of the amount necessary to be issued for the purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds to be issued, is separately stated in the petition.

(3) The petition may consist of one sheet or of several sheets, identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the city or town clerk as provided in this part.

(4) Only persons who are qualified to sign petitions are qualified to circulate the petitions, and there must be attached to the completed petition the affidavit of some person who circulated or assisted in circulating the petition that the person believes the signatures on the petition are genuine and that the signers knew the contents of the petition before signing the petition.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part); amd. Sec. 507, Ch. 61, L. 2007.

7-7-4225. Presentation of petition to city or town clerk — clerk's certificate. (1) The completed petition for an election on the bonds must be filed with the city or town clerk. The clerk shall, within 15 days, carefully examine the petition and the county records showing the qualifications of the petitioners and attach to the petition a certificate, under official signature.

(2) The certificate must set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to the petition have all of the qualifications required of signers to the petition;

(c) whether the qualified signers constitute more or less than 20% of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part); amd. Sec. 508, Ch. 61, L. 2007.

7-7-4226. Resolution to submit question of issuing bonds to voters. (1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to a statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution must:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make provisions that are necessary for submitting the question to the registered electors of the city or town at the next general city or town election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election and that the governing body may call for the purpose.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution containing the information required in this section and setting forth the essential facts in regard to the filing and presentation of the petition.

History: En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973; R.C.M. 1947, 11-2307.1; amd. Sec. 6, Ch. 212, L. 1979; amd. Sec. 316, Ch. 571, L. 1979; amd. Sec. 33, Ch. 387, L. 1995; amd. Sec. 5, Ch. 234, L. 1997.

7-7-4227. Notice of election. (1) Whether the election is held at the general city or town election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, separate notice of the election must be given.

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to be issued;

(iii) the purpose of the bonds;

(iv) the term of years through which the bonds will be paid; and

(v) other information regarding the election and the proposed bonds that the board may consider proper.

(b) If the bonds that are proposed to be issued are for two or more purposes, each purpose and the amount for each purpose must be separately stated.

(3) The notice must be published as provided in 13-1-108 and may be posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election.

History: En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part); amd. Sec. 317, Ch. 571, L. 1979; amd. Sec. 1, Ch. 407, L. 1989; amd. Sec. 34, Ch. 387, L. 1995; amd. Sec. 6, Ch. 234, L. 1997.

7-7-4228. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part).

7-7-4229. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part).

7-7-4230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 160, L. 1931; re-en. Sec. 5278.9, R.C.M. 1935; R.C.M. 1947, 11-2309(part).

7-7-4231. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 10, Ch. 160, L. 1931; re-en. Sec. 5278.10, R.C.M. 1935; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1971; R.C.M. 1947, 11-2310(part).

7-7-4232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 10, Ch. 160, L. 1931; re-en. Sec. 5278.10, R.C.M. 1935; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1071; R.C.M. 1947, 11-2310(part).

7-7-4233. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 160, L. 1931; re-en. Sec. 5278.9, R.C.M. 1935; R.C.M. 1947, 11-2309(part).

7-7-4234. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part).

7-7-4235. Percentage of electors required to authorize issuing of bonds. Whenever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

History: En. Sec. 11, Ch. 160, L. 1931; re-en. Sec. 5278.11, R.C.M. 1935; R.C.M. 1947, 11-2311; amd. Sec. 318, Ch. 571, L. 1979; amd. Sec. 3, Ch. 336, L. 1989; amd. Sec. 35, Ch. 387, L. 1995; amd. Sec. 7, Ch. 234, L. 1997; amd. Sec. 1, Ch. 190, L. 1999.

7-7-4236. Resolution to sell bonds. (1) If issuing of bonds has been approved as provided in 7-7-4235, the city or town council shall pass a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any;

(g) that a bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued; and

(h) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The council may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The city or town council may fix the minimum price for the bonds in an amount not less than 97% of the face value if the city or town council determines that the sale is in the best interests of the city or town.

History: En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part); amd. Sec. 7, Ch. 212, L. 1979; amd. Sec. 4, Ch. 336, L. 1989; amd. Sec. 7, Ch. 511, L. 1989; amd. Sec. 20, Ch. 423, L. 1995.

7-7-4237 through 7-7-4250 reserved.

7-7-4251. Form of notice of sale of bonds. (1) The notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of...., Montana, that the council will, on the.... day of....,...., at the hour of......m., at its council chamber in the (city or town) of...., Montana, sell to the highest and best bidder for cash general obligation bonds of the (city or town) in the total amount of.... dollars, ($....) for the purpose of.....

The bonds will be issued and sold in the aggregate principal amount of.... dollars ($....) each and will become due and payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).

The bonds must bear an original issue date of....,...., must pay interest commencing on the.... day of.... (month),.., and are payable semiannually on the.... day of.... and on the.... day of.... in each year thereafter and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

The bonds will be sold for not less than $...., with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed....% a year.) The council reserves the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-203) in the sum of.... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the council of the (city or town) of.... and delivered to the clerk of the (city or town).

....
Mayor of the (city or town) of
....., Montana

ATTEST:

....
(City or Town) Clerk

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-4211 through 7-7-4213.

History: En. Sec. 13, Ch. 160, L. 1931; re-en. Sec. 5278.13, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2313; amd. Sec. 2, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 5, Ch. 631, L. 1983; amd. Sec. 8, Ch. 511, L. 1989; amd. Sec. 6, Ch. 459, L. 1997.

7-7-4252. Publication of notice of sale. The city or town council or commission shall cause such notice to be published as provided in 17-5-106 in a newspaper of general circulation printed and published in said city or town if there be one and, if not, then in a newspaper of general circulation printed and published in the county in which said city or town is located. The council or commission may in its discretion cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders.

History: En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part); amd. Sec. 3, Ch. 173, L. 1987.

Cross-References

Payment of certain costs by Board of Investments, 17-5-1644.

7-7-4253. Repealed. Sec. 5, Ch. 6, L. 1993.

History: En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part).

7-7-4254. Procedure for sale of bonds. (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The council shall accept the bid that it judges most advantageous to the city or town. The council may reject any bids and sell the bonds at private sale if the council considers it in the best interests of the city or town.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale of the bonds.

History: En. Sec. 15, Ch. 160, L. 1931; re-en. Sec. 5278.15, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1971; R.C.M. 1947, 11-2315; amd. Sec. 8, Ch. 212, L. 1979; amd. Sec. 6, Ch. 631, L. 1983; amd. Sec. 21, Ch. 423, L. 1995.

7-7-4255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the city or town council shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, providing the manner of execution of the bonds, and if applicable, specifying whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

(2) Each bond and each coupon attached to a bond must be signed by or bear the facsimile signatures of the mayor and the treasurer of the city or town and must be attested by the city or town clerk, provided that one signature of a city or town official or the bond registrar must be a manual signature. Each bond may have the city or town seal or its facsimile imprinted on the bond.

History: En. Sec. 16, Ch. 160, L. 1931; re-en. Sec. 5278.16, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1959; R.C.M. 1947, 11-2316; amd. Sec. 22, Ch. 423, L. 1995; amd. Sec. 4, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 489 in (1) at end inserted language concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds; and made minor changes in style. Amendment effective May 14, 2009.

7-7-4256. Printing of bonds. (1) Except as provided in subsection (2), the city or town clerk, under the direction of the council, shall cause the bonds, with coupons attached, to be printed or lithographed at the expense of the city or town at lowest commercial rates.

(2) A purchaser of the bonds may furnish the bonds to the city or town, in the form prescribed by the council, for execution, if furnished at the purchaser's own expense and without cost or expense to the city or town.

History: En. Sec. 17, Ch. 160, L. 1931; re-en. Sec. 5278.17, R.C.M. 1935; R.C.M. 1947, 11-2317; amd. Sec. 509, Ch. 61, L. 2007.

7-7-4257. Registration of bonds. (1) When executed by the officers of the city or town, the bonds must be registered by the city treasurer or town clerk before being delivered to the purchaser.

(2) The registration must show:

(a) the date of issue, the maturities of the bonds subject to early redemption, the redemption dates, and the dates when the principal and interest on the bonds will become due; and

(b) the amount of all payments of both principal and interest required on each bond, with the dates when the payments must be made.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part); amd. Sec. 23, Ch. 423, L. 1995.

Cross-References

System of registration, 17-5-1111.

7-7-4258. Copy of bond to be kept by city treasurer. The city or town clerk shall also deliver to the city treasurer an unsigned and canceled printed copy of one of the bonds, as issued and registered, to be preserved in the treasurer's office.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part); amd. Sec. 510, Ch. 61, L. 2007.

7-7-4259. Delivery of bonds. The city treasurer or town clerk shall deliver the bonds to the purchaser upon receiving full payment for the bonds.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part); amd. Sec. 6, Ch. 581, L. 1987; amd. Sec. 24, Ch. 423, L. 1995.

7-7-4260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the city treasurer or town clerk and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part).

7-7-4261. Maintenance of accounts for bond issues. (1) The city treasurer or town clerk shall keep in the treasurer's or clerk's books a special and separate sinking fund account for each issue or series of outstanding bonds, including citizen bonds as provided in 7-7-4211 through 7-7-4214, issued by the city or town. Each fund must at all times show the exact condition of the fund.

(2) All taxes collected for interest and principal on city or town bonds must be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund must be administered as provided in 7-7-123, 7-7-124, and 7-7-4270.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part); amd. Sec. 5, Ch. 256, L. 1979; amd. Sec. 9, Ch. 511, L. 1989; amd. Sec. 511, Ch. 61, L. 2007.

7-7-4262. Payment of principal and interest. The city treasurer or town clerk shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as the interest and principal become due and at the place where the bonds are payable, upon presentation and surrender of the coupon or bond to be paid.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part); amd. Sec. 25, Ch. 423, L. 1995.

7-7-4263. Interest on late payments of principal and interest. Any and all installments of interest or principal of bonds issued under the provisions of this part not promptly paid when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part).

7-7-4264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any city or town has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the city treasurer or town clerk shall, between July 1 and July 15 in each year while such bonds or any of them remain outstanding and unpaid, make out and deliver to the city or town clerk a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds outstanding or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-4204.

(3) The statement prepared by the city treasurer or town clerk shall be presented by the city or town clerk to the city or town council at its next meeting.

History: En. Sec. 21, Ch. 160, L. 1931; re-en. Sec. 5278.21, R.C.M. 1935; R.C.M. 1947, 11-2321.

7-7-4265. Tax levy for payment of bonds. (1) The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax upon all taxable property in the city or town for the payment of interest and principal for each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other issue or series of bonds.

(2) Except as provided in subsection (3), the levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided for by 7-7-4264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by 7-7-4264.

(3) The annual levies made for the purpose of paying off bonds that provide for no periodic interest payments but rather are sold at a discount from their face value, as provided in 7-7-4211 through 7-7-4214, must be actuarially sufficient so that at the time for redemption there is an amount in the sinking fund sufficient to redeem the bonds.

History: En. Sec. 22, Ch. 160, L. 1931; re-en. Sec. 5278.22, R.C.M. 1935; R.C.M. 1947, 11-2322; amd. Sec. 9, Ch. 212, L. 1979; amd. Sec. 10, Ch. 511, L. 1989.

7-7-4266. Procedure in case of insufficient tax levy — individual liability of council members. (1) If the council of any city or town shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-4265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such city or town may apply to the district court of the county in which the city or town issuing such bonds is situated for a writ of mandate to compel the city or town council to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the city or town council has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be

raised for such purposes under the provisions of 7-7-4265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such city or town council, at the next meeting thereof for the purpose of making and fixing city or town levies, to make and fix a tax levy against all taxable property in such city or town sufficient to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petition in any such proceeding shall be paid by the members of the city or town council and shall not be a charge against the city or town.

History: En. Sec. 23, Ch. 160, L. 1931; re-en. Sec. 5278.23, R.C.M. 1935; R.C.M. 1947, 11-2323.

Cross-References

Writ of mandate, Title 27, ch. 26.

7-7-4267. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).

7-7-4268. Redemption of bonds. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the city treasurer or town clerk shall apply the available money in redemption of as many of the bonds as the available money will pay and redeem to a redemption date on or before the next interest payment date, as fixed by the city treasurer or town clerk.

(2) The city treasurer or town clerk shall notify the holder of the bond or bonds, if ownership of the bonds is registered or is otherwise known to the treasurer, the registered owners at their addresses as they appear in the bond registration books, and any bank or financial institution at which the bonds are payable, by mail sent at least 30 days before the redemption date, that bonds will be redeemed and paid on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment not affected by the defect or failure. If the ownership of the bonds is not registered, the city treasurer or town clerk shall also publish in a newspaper of general circulation printed and published in the city or town and, if there is none, then in a newspaper of general circulation in the city or town printed and published in the county in which the city or town is situated a notice that the bond or bonds have been called for redemption and will be paid in full on the redemption date. The notice must be published once, not less than 30 days prior to the redemption date. If actual notice of the call has been received, the holder of a bond may waive published or mailed notice.

(3) If the bonds are payable at a bank or financial institution, the city treasurer or town clerk shall remit to the bank or financial institution, before the redemption date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for redemption and payment on the redemption date, interest ceases on that date if the funds have been deposited in the bank or financial institution.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part); amd. Sec. 3, Ch. 453, L. 1993; amd. Sec. 26, Ch. 423, L. 1995.

7-7-4269. Order of redemption of bonds. All bonds to be redeemed under the provisions of 7-7-4268 may be redeemed in the order that the city treasurer or city clerk selects, consistent with the provisions of the resolution authorizing the issuance of the bonds.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part); amd. Sec. 4, Ch. 453, L. 1993; amd. Sec. 27, Ch. 423, L. 1995.

7-7-4270. Authority to buy outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state and are not subject to redemption, the city treasurer or town clerk, at the direction of the city or town council, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the council may feel justified in paying, not, in any case, exceeding 5%.

History: En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part); amd. Sec. 6, Ch. 256, L. 1979.

7-7-4271. Repealed. Sec. 7, Ch. 256, L. 1979.

History: En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part).

7-7-4272. Cancellation of bonds and coupons. (1) All bonds and interest coupons paid by the city treasurer or town clerk from time to time must be canceled by the treasurer or clerk. After cancellation, the treasurer or clerk shall deliver the bonds and coupons to the city or town clerk, with a report showing the numbers of the bonds and the amounts paid as principal and interest. The city treasurer or town clerk shall enter on the records of the registration of the bonds the date of the payment of the bonds and the coupons attached to the bonds.

(2) The city or town clerk shall exhibit the bonds and coupons, with the report, to the city or town council at its next regular meeting.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part); amd. Sec. 512, Ch. 61, L. 2007.

7-7-4273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the city treasurer or town clerk shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the city or town clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The city or town clerk shall exhibit such warrants or bonds, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4274. Closing of accounts and transfer of money to other funds. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the city or town or to the sinking and interest fund of any other issue or series of bonds outstanding that the city or town council may designate.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part).

7-7-4275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments pursuant to 17-5-102. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43.

History: En. Sec. 29, Ch. 160, L. 1931; re-en. Sec. 5278.29, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2329; amd. Sec. 3, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Part 43
Municipal Refunding General Obligation Bonds

7-7-4301. Authorization to issue refunding general obligation bonds. The city or town council may contract an indebtedness on behalf of a city or town, upon the credit of the city or town, by issuing bonds for the funding of outstanding warrants and maturing bonds when there are not sufficient funds available to pay the outstanding warrants or maturing bonds or when there is a reduction in debt service as a result of refunding pursuant to 7-7-4304.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34,

L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 28, Ch. 423, L. 1995.

7-7-4302. Applicability of certain other bond provisions. (1) The provisions of 7-7-4201 through 7-7-4206, 7-7-4208 through 7-7-4210, 7-7-4255 through 7-7-4266, 7-7-4268 through 7-7-4270, and 7-7-4272 through 7-7-4274 apply to refunding bonds issued under this part; however, the city or town council may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4251, 7-7-4252, and 7-7-4254.

(2) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 7-7-4210.

History: En. by Code Commissioner, 1979; amd. Sec. 2, Ch. 647, L. 1983; amd. Sec. 16, Ch. 370, L. 1987; amd. Sec. 2, Ch. 6, L. 1993; amd. Sec. 29, Ch. 423, L. 1995.

7-7-4303. Term of refunding general obligation bonds. (1) Except as provided in subsection (2), when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than 10 years.

(2) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town. Variable rate refunding bonds may also be issued if the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part); amd. Sec. 2, Ch. 54, L. 1989; amd. Sec. 30, Ch. 423, L. 1995; amd. Sec. 3, Ch. 277, L. 2003; amd. Sec. 9, Ch. 451, L. 2005.

7-7-4305 through 7-7-4310 reserved.

7-7-4311. Procedure to issue refunding general obligation bonds. In order to issue bonds to refund bonds theretofore issued and outstanding, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds and fixing and determining the details thereof, including whether the bonds will be sold at a private negotiated sale or public sale.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; ; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part); amd. Sec. 3, Ch. 647, L. 1983.

7-7-4312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the city treasurer or town clerk to apply the proceeds derived from the sale of such bonds to the payment of such funded warrants or refunded bonds.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4313 through 7-7-4315 reserved.

7-7-4316. Advance refunding bonds. (1) A city or town may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or outside of the state.

(2) Except as provided in subsection (3), the funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on those dates and bear interest at those rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(3) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund that is composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(4) The escrow account is irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the sinking fund account for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the city or town to the escrow account. The city or town may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-4201 or any other debt limitation.

History: En. Sec. 8, Ch. 647, L. 1983; amd. Sec. 4, Ch. 277, L. 2003.

Cross-References

Counties — advance refunding bonds, 7-7-2316.

Issuance of school refunding bonds without election, 20-9-412.

Part 44
Municipal Revenue Bonds

7-7-4401. Short title. This part may be cited as "The Municipal Revenue Bond Act of 1939".

History: En. Sec. 1, Ch. 126, L. 1939; R.C.M. 1947, 11-2401.

7-7-4402. Definitions. As used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Governing body" means a body or board that has charge of finances and management of a municipality.

(2) "Municipality" means a city or town, however organized.

(3) "Undertaking" means one or a combination of the following:

(a) water and sewer systems, together with all parts of the systems and appurtenances to the systems, including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities;

(e) streets and roads;

(f) public parking facilities, solid waste management systems, or other revenue-producing facilities and services authorized for cities and towns; and

(g) public transportation systems, including passenger buses, trolleys, passenger trains and lines, light rail trains and lines, and the facilities associated with those systems.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969; R.C.M. 1947, 11-2402; amd. Sec. 5, Ch. 770, L. 1991; amd. Sec. 1, Ch. 248, L. 2009; amd. Sec. 1, Ch. 265, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 248 in definition of undertaking inserted (e) to include streets and roads; and made minor changes in style. Amendment effective April 16, 2009.

Chapter 265 in definition of undertaking inserted (g) concerning public transportation systems; and made minor changes in style. Amendment effective July 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

7-7-4403. Interpretation of part. (1) The powers conferred in this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this part for said purposes, notwithstanding that any general, special, or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking or the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law, including but not limited to any requirement for the approval by the voters of any municipality.

(3) Insofar as the provisions of this part are inconsistent with the provisions of any other general, special, or local law, the provisions of this part shall be controlling.

History: En. Sec. 13, Ch. 126, L. 1939; R.C.M. 1947, 11-2413.

7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings. A municipality under this part may:

(1) construct, reconstruct, improve, or extend any undertaking, within or outside of the municipality or partially within or partially outside of the municipality, and acquire by gift, purchase, or the exercise of the right of eminent domain pursuant to Title 70, chapter 30, any undertaking and land or rights in land or water rights in connection with the undertaking;

(2) operate and maintain any undertaking and furnish the service, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside of the territorial boundaries of the municipality; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by the undertaking.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part); amd. Sec. 3, Ch. 125, L. 2001.

7-7-4405. Pollution abatement. In addition to the powers which it now may have, any municipality shall have the power under this part to:

(1) enter into cooperative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance, and operation of undertakings and apply for and accept grants and loans or any other aid which the United States or any agency thereof may give or make to any political subdivision or agency of this state for undertakings, including all necessary actions preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution;

(2) make contracts and execute instruments containing such terms, provisions, and conditions as, in the discretion of the governing body of the municipality, may be necessary, proper, or advisable for the purpose of obtaining such aid;

(3) enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewer facilities when the governing body of such municipality determines such action to be in the public interest and otherwise essential in order to abate or reduce the pollution of waters caused by discharges of industrial waste by such industrial establishment and to provide for the periodical payment by said industrial establishment to the municipality of an amount at least sufficient, in the

determination of such governing body, to compensate the municipality for the cost of providing (including the payment of principal and interest charges, if any) and of operating and maintaining the sewer facilities serving such industrial establishment.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4406. Cooperation among municipalities. (1) Any two or more municipalities, through their respective governing bodies, are hereby authorized and empowered to enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition, and the finance of undertakings, in whole or in part, and the maintenance and operation thereof.

(2) Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the undertakings and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof.

(3) No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality.

History: **(1), (2)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (3)En. Sec. 11, Ch. 126, L. 1939; Sec. 11-2411, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2411.**

7-7-4407. Role of state agencies. A municipality acting pursuant to this part is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking. The supervisory powers and duties of the department of environmental quality apply to projects under this part.

History: **En. Sec. 12, Ch. 126, L. 1939; amd. Sec. 106, Ch. 349, L. 1964; R.C.M. 1947, 11-2412; amd. Sec. 23, Ch. 418, L. 1995.**

7-7-4408 through 7-7-4420 reserved.

7-7-4421. Authority to issue revenue bonds. (1) In addition to the powers that it may now have, any municipality has power under this part to:

(a) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(b) pledge to the punctual payment of the bonds issued under part 45 or this part and interest on the bonds an amount of the revenue of the undertaking, including improvements, betterments, or extensions thereafter constructed or acquired, or of any part of the undertaking sufficient to pay the bonds and interest as they become due, with an amount consisting of all or any part or portion of the revenue, and create and maintain reasonable reserves for the bonds.

(2) If applicable, the municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part); amd. Sec. 5, Ch. 489, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 489 inserted (2) concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds; and made minor changes in style. Amendment effective May 14, 2009.

7-7-4422. Determination of cost. The governing body of a municipality, in determining cost for purposes of 7-7-4421, may include:

(1) all costs and estimated costs of the issuance of revenue bonds, including a permissible underwriter's discount, if any;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest estimated to accrue during the construction period and for 6 months after construction on money borrowed or on money that it is estimated will be borrowed pursuant to this part.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part); amd. Sec. 31, Ch. 423, L. 1995.**

7-7-4423. Nature of revenue bonds. (1) No holder or holders of any bonds issued under this part shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon.

(2) Each bond issued under this part shall recite in substance that:

(a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

(b) said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision.

History: **En. Sec. 8, Ch. 126, L. 1939; R.C.M. 1947, 11-2408.**

7-7-4424. Undertakings to be self-supporting. (1) (a) Except as provided in subsections (1)(b) and (1)(c), the governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting.

(b) The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509 constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(c) Revenue from assessments and fees enacted by local ordinance constitutes revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds for the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

History: **En. Sec. 9, Ch. 126, L. 1939; R.C.M. 1947, 11-2409; amd. Sec. 32, Ch. 423, L. 1995; amd. Sec. 2, Ch. 248, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 248 in (1)(a) at beginning inserted exception clause; inserted (1)(c) providing that revenue from assessments and fees enacted by local ordinance constitutes revenue of the undertaking and may not result in an undertaking being considered not self-supporting; and made minor changes in style. Amendment effective April 16, 2009.

7-7-4425. Use of revenue from undertaking. (1) Any municipality issuing bonds pursuant to this part for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking shall have the right to appropriate, apply, or extend the revenue of such undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;

(b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part, for the payment of which the revenue of such undertaking is or shall have been pledged, charged, or encumbered;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of such undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of such undertaking; and

(e) to provide a reserve for betterments to such undertaking.

(2) Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general fund.

History: **En. Sec. 10, Ch. 126, L. 1939; R.C.M. 1947, 11-2410.**

7-7-4426. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon the question at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, or that is held in conjunction with a regular or primary election, if the governing body in its sole discretion chooses to submit the question to the electorate.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 36, Ch. 387, L. 1995; amd. Sec. 8, Ch. 234, L. 1997.

7-7-4427. Special election on question of issuing bonds. (1) When the governing body has chosen to submit the question of issuing bonds to the electorate, the special election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with a regular or primary election and must be noticed and conducted as provided for municipal general obligation bonds in chapter 7, part 42.

(2) The special election must be held not later than the next municipal election that is held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part has and ordered the special election.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 40, Ch. 575, L. 1981; amd. Sec. 37, Ch. 387, L. 1995; amd. Sec. 9, Ch. 234, L. 1997.

7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property and resort tax revenue referred to in 7-7-4424;

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the undertaking;

(4) the issuance of other or additional bonds payable from the revenue of the undertaking;

(5) the operation and maintenance of the undertaking;

(6) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same manner as the municipality itself might do.

History: En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part); amd. Sec. 33, Ch. 423, L. 1995.

7-7-4429. Remedies. The provisions of this part and any such resolution or resolutions shall be enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

History: En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part).

Cross-References

Writ of mandate, Title 27, ch. 26.

7-7-4430. Presumptions of validity of bonds. (1) Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same.

(2) The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued.

(3) The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

History: En. Sec. 6, Ch. 126, L. 1939; R.C.M. 1947, 11-2406.

7-7-4431. Liens arising from bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 7, Ch. 126, L. 1939; amd. Sec. 2, Ch. 52, L. 1949; R.C.M. 1947, 11-2407.

7-7-4432. Details relating to revenue bonds. (1) Bonds authorized to be issued under this part:

(a) must bear interest at a rate or rates not exceeding the limitation of 17-5-102;

(b) may be issued in one or more series;

(c) may bear a date or dates;

(d) may mature at a time or times not exceeding 40 years from their respective dates of issue;

(e) may be payable in a place or places;

(f) may carry registration privileges;

(g) may be subject to terms of redemption;

(h) may be executed;

(i) may contain terms, covenants, and conditions; and

(j) may be in coupon or registered form, as provided by the initial resolution or subsequent resolutions.

(2) The governing body may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the undertaking.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 4, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 34, Ch. 423, L. 1995.

7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part must be sold at a price not less than that prescribed by the governing body, plus interest to the date of delivery of the bonds.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.

(b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 7, Ch. 705, L. 1983; amd. Sec. 35, Ch. 423, L. 1995.

7-7-4434. Notice of sale of bonds. The notice of sale of bonds required by 7-7-4433(2)(b) must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the governing body may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.

History: **En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 36, Ch. 423, L. 1995.**

7-7-4435. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: **En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).**

Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8.

Part 45
Municipal Refunding Revenue Bonds
Option 1

7-7-4501. Authority to issue refunding revenue bonds. (1) In addition to the powers that it may have, any municipality has the power under this part to refund bonds issued for any of the purposes listed in 7-7-4421(1)(a), whether issued under authority of part 45 or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section are governed by all of the provisions of part 44, except 7-7-4433 and 7-7-4434, as fully as bonds issued for the initial financing of any undertaking and by the further provisions of this part.

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the revenue pledged is not sufficient, but not to refund any bonds or interest due that may be paid from revenue then on hand.

History: **(1)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (2), (3)En. 11-2414 by Sec. 1, Ch. 50, L. 1936; Sec. 11-2414, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2414(part); amd. Sec. 5, Ch. 647, L. 1983; amd. Sec. 6, Ch. 489, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 489 in (1) near middle substituted "7-7-4421(1)(a)" for "7-7-4421(1)"; and made minor changes in style. Amendment effective May 14, 2009.

7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from the computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds being refunded, computed to their respective stated maturity dates. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds being refunded if:

(a) they are issued to refund matured principal or interest for the payment of which revenue on hand is not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of the new bonds upon the revenue of the undertaking must be junior and subordinate to the lien of the outstanding bonds being refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding;

(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality; or

(d) the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(3); amd. Sec. 3, Ch. 54, L. 1989; amd. Sec. 5, Ch. 277, L. 2003; amd. Sec. 10, Ch. 451, L. 2005.

7-7-4503. Exchange or sale of refunding revenue bonds. (1) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4433 and 7-7-4434 at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(part); amd. Sec. 4, Ch. 647, L. 1983.

7-7-4504. Deposit of proceeds of refunding revenue bonds in escrow. (1) In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company. The bank or trust company shall:

(a) have its principal place of business within or without the state;

(b) be a member of the federal reserve system; and

(c) have a combined capital and surplus not less than $1 million.

(2) The proceeds deposited in escrow shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(4).

7-7-4505. Use of excess revenues and pledged reserves. (1) Revenues and other funds on hand in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed, as provided in 7-7-4504, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(5).

Part 46
Municipal Refunding Revenue Bonds
Option 2

7-7-4601. Short title. This part may be cited as "The Revenue Bond Refinancing Act of 1937".

History: En. Sec. 1, Ch. 121, L. 1937; R.C.M. 1947, 79-1901.

7-7-4602. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Enterprise" means any work, undertaking, or project that the municipality is authorized to construct and from which the municipality derives revenue for the refinancing or the refinancing and improving of which enterprise refunding bonds are issued under this part. The enterprise includes all incidental or connected improvements, betterments, extensions, replacements, appurtenances, facilities, lands, rights in land, water rights, franchises, and structures.

(2) "Governing body" means, in the case of a city or town, the council, commission, or other body, board, officer, or officers having charge of the finances of the city or town.

(3) "Holder of bonds" or "bondholder" (or any similar term) means a person who is the bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner of any outstanding bond that is at the time registered other than to bearer.

(4) "Improving" means reconstructing, replacing, extending, repairing, bettering, equipping, developing, or embellishing.

(5) "Law" means any act or statute (general, special, or local) of this state, including but not limited to the charter of any municipality.

(6) "Municipality" means any city or town of this state.

(7) "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improving of an enterprise and payable solely from all or any part of the revenue of the refunding bonds, including interest on the refunding bonds in arrears or about to become due, whether or not represented by coupons or interest certificates.

(8) "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this part.

(9) "Revenue" means all fees, tolls, rates, rentals, and charges to be levied and collected in connection with an enterprise and all other income and receipts of whatever kind or character derived by the municipality from the operation of an enterprise or arising from an enterprise.

History: En. Sec. 2, Ch. 121, L. 1937; R.C.M. 1947, 79-1902(part); amd. Sec. 10, Ch. 212, L. 1979; amd. Sec. 35, Ch. 42, L. 1997.

7-7-4603. Scope of part. (1) This part constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts, or things by any governing body of any municipality or any board, officer, commission, department, agency, or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this part except as may be prescribed in this part.

(2) The powers conferred by this part shall be in addition and supplemental to and not in substitution for and the limitations imposed by this part shall not affect the powers conferred by any other law.

(3) This part is remedial in nature and shall be liberally construed.

History: En. Sec. 16, Ch. 121, L. 1937; R.C.M. 1947, 79-1916.

7-7-4604. Interpretation of part. Nothing in this part shall in any way be deemed to:

(1) alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality;

(2) authorize the municipality to alter the terms of any such agreements;

(3) impair or authorize the municipality to impair the rights and remedies of any creditors of the municipality;

(4) authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt.

History: En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(4), (5).

7-7-4605. Authorization for refinancing and refunding revenue bonds. Any municipality shall have power and is hereby authorized to refinance or to refinance and improve any enterprise and for such purpose or purposes, to borrow money and issue refunding bonds from time to time.

History: En. Sec. 3, Ch. 121, L. 1937; R.C.M. 1947, 79-1903.

7-7-4606. Nature of refunding revenue bonds. (1) No recourse shall be had for the payment of the refunding bonds, interest thereon, or any part thereof against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

(2) The refunding bonds and interest thereon shall not be a debt of the municipality or a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality or upon any income, receipts, or revenues of the municipality, other than such of the revenues of the enterprise as shall have been pledged to the payment thereof. Every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same except from said revenues.

History: En. Sec. 9, Ch. 121, L. 1937; R.C.M. 1947, 79-1909.

7-7-4607. Exemption from certain taxes for refunding revenue bonds. Refunding bonds issued pursuant to this part and the income from those bonds are exempt from taxation, except estate taxes.

History: En. Sec. 10, Ch. 121, L. 1937; R.C.M. 1947, 79-1910; amd. Sec. 2, Ch. 9, Sp. L. May 2000.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

7-7-4608. Refunding revenue bonds to be fully negotiable. Notwithstanding the form or tenor thereof and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be and shall be treated as fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part).

Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8.

7-7-4609. Presumptions of validity of refunding revenue bonds. (1) Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery thereof, any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof.

(2) The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued or by contracts made in connection with the improving of any such enterprise.

(3) Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this part, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this part.

History: En. Sec. 6, Ch. 121, L. 1937; R.C.M. 1947, 79-1906.

7-7-4610. Details relating to refunding revenue bonds. The refunding bonds may, as provided by resolution of the governing body of the municipality:

(1) be issued in one or more series, bear such date or dates, and mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, and, in any event, not exceeding 40 years from their respective dates;

(2) bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, except that refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality;

(3) be in such denomination or denominations and be in such form, either coupon or registered;

(4) carry such registration and conversion privileges;

(5) be executed in such manner;

(6) be payable in such medium of payment and at such place or places;

(7) be subject to such terms of redemption, with or without a premium;

(8) be declared or become due before the maturity date thereof;

(9) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(10) be authenticated in such manner and upon compliance with such conditions; and

(11) contain such other terms and covenants.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part); amd. Sec. 4, Ch. 54, L. 1989.

7-7-4611 through 7-7-4620 reserved.

7-7-4621. Resolution for issuance of refunding revenue bonds. (1) The refunding bonds shall be authorized by resolution of the governing body of the municipality. Such resolution may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution shall take effect immediately upon the adoption thereof.

(2) No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality.

History: En. Sec. 4, Ch. 121, L. 1937; R.C.M. 1947, 79-1904.

7-7-4622. Permissible covenants for refunding revenue bonds. (1) The governing body of any municipality shall have power, in addition to the other powers conferred by this part, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) limitations on the purpose to which the proceeds of sale of any issue of refunding bonds or any notes, bonds, or other obligations then or thereafter to be issued to finance the improving of the enterprise may be applied;

(b) limitations on the issuance of additional refunding bonds or additional notes, bonds, or other obligations to finance the improving of the enterprise and on the lien thereof;

(c) limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) the amount and kind of insurance to be maintained on the enterprise and the use and disposition of insurance money;

(e) pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(g) events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations;

(i) the vesting in a trustee or trustees of the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this part or duties imposed hereby;

(j) a procedure by which the terms of any resolution authorizing refunding bonds or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) the execution of all instruments necessary or convenient in the exercise of the powers granted by this part or in the performance of the duties of the municipality and the officers, agents, and employees thereof;

(l) refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted or at any time hereafter in force which may affect the duties or covenants of the municipality in relation to the refunding bonds, the performance thereof, or the lien of such refunding bonds;

(m) the purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds, or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds or as may tend to make the refunding bonds more marketable.

(2) Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act, or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 13, Ch. 121, L. 1937; R.C.M. 1947, 79-1913.

7-7-4623. Security for refunding revenue bonds. (1) The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution of the governing body authorizing the issuance of the refunding bonds. Subject to the constitution of the state of Montana and to the prior or superior rights of any person, any municipality shall have power, by resolution of its governing body, to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

(2) (a) As additional security for any issue of refunding bonds hereunder or any part thereof, any municipality shall have power and is hereby authorized, by resolution of its governing body, to confer upon the holders of the refunding bonds all rights, powers, and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds, or other obligations for the refinancing of which such refunding bonds shall have been issued, including but not limited to the preservation of the lien of such notes, bonds, or other obligations without extinguishment, impairment, or diminution thereof.

(b) In the event any municipality exercises the power conferred by this subsection:

(i) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this subsection; and

(ii) each note, bond, certificate, or other obligation of the municipality to be refinanced by any such refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds and interest thereon have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate, or other obligation has been refunded pursuant to the Revenue Bond Refinancing Act of 1937.

(3) All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number or date of bond, of sale, of execution, or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution authorizing the issuance of such refunding bonds.

History: En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(1) thru (3).

7-7-4624. Use of fiscal agent. Any municipality shall have power, in connection with the issuance of refunding bonds:

(1) to appoint a fiscal agent;

(2) to provide for the powers, duties, and functions and compensation of such fiscal agent;

(3) to limit the liabilities of such fiscal agent;

(4) to prescribe a method for the resignation, removal, merger, or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

History: **En. Sec. 11, Ch. 121, L. 1937; R.C.M. 1947, 79-1911.**

7-7-4625. Sale or exchange of refunding revenue bonds. (1) The refunding bonds may be sold or exchanged in installments at different times, or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time.

(2) The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates, or other obligations to be refinanced thereby.

History: **En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(1).**

7-7-4626. Details relating to sales of refunding revenue bonds. If the governing body determines to sell any refunding bonds, the refunding bonds may not be sold at less than 97% of the face value and must be sold at public or private sale and in a manner and upon terms that the governing body considers best for the interests of the municipality.

History: **En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(3); amd. Sec. 7, Ch. 459, L. 1997.**

7-7-4627. Details relating to exchanges of refunding revenue bonds. (1) If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds, or other obligations of the municipality issued to finance or to aid in financing the acquisition, construction, improving, refinancing, or improving and refinancing of an enterprise.

(2) The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds, or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due.

(3) The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

History: **En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(2).**

7-7-4628. Payment of bonds. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to pay or cause to be paid punctually the principal of every refunding bond and the interest thereon on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) to preserve and protect the security of the refunding bonds and the rights of the holders thereof and warrant and defend such rights against all claims and demands of all persons whomsoever;

(c) to hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution authorizing the issuance of the refunding bonds, or if such resolution shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution as modified.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: **En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (a), (d), (f), (2).**

7-7-4629. Management of enterprise. (1) In order that the payment of the refunding bonds and interest on the bonds is adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees of the municipality shall at all times:

(a) operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect fees, tolls, rentals, rates, and other charges in connection with the enterprise as may be necessary or proper, in an amount that is sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates:

(i) to pay all current expenses of operation, maintenance, and repair of the enterprise;

(ii) to pay the interest on and principal of the refunding bonds as the principal becomes due and payable;

(iii) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and

(iv) to meet any other obligations of the municipality that are charges, liens, or encumbrances upon the revenue of the enterprise;

(b) operate, maintain, preserve, and keep or cause to be operated, maintained, preserved, and kept the enterprise and every part of the enterprise in good repair, working order, and condition;

(c) pay and discharge or cause to be paid or discharged any lawful claims for labor, materials, and supplies that, if unpaid, might by law become a lien or charge upon the revenue prior or superior to the lien of the refunding bonds or that might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds are fully preserved and protected;

(d) keep proper books of record and accounts of the enterprise, separate from all other records and accounts, in which complete and correct entries must be made of all transactions relating to the enterprise and that, together with all other books and papers of the municipality, must at all times be subject to the inspection of the holders of not less than 10% of the refunding bonds then outstanding or the holders' representatives authorized in writing.

(2) The duties in subsection (1) may not be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenue received or receivable from the enterprise.

History: **En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (b), (c), (e), (g), (2); amd. Sec. 513, Ch. 61, L. 2007.**

7-7-4630. Right to receivership upon default. (1) Any holder of refunding bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the district court or any court of competent jurisdiction for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder or trustee therefor is seeking or has sought to enforce any other right or exercise any remedy in connection with such refunding bonds:

(a) in the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or

(b) in the event that the municipality or the governing body or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this part or shall default in any agreement made with the holders of the refunding bonds.

(2) Upon such application, the district court may appoint and if the application is made by the holders of 25% in principal amount of such refunding bonds then outstanding or any trustee for holders of such refunding bonds in such principal amount shall appoint a receiver of the enterprise.

History: **En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(1).**

7-7-4631. Role of receiver. (1) The receiver appointed pursuant to 7-7-4630 shall, directly or by the receiver's agents and attorneys, enter into and upon and take possession of the enterprise and every part of the enterprise and may exclude the municipality, its governing body, officers, agents, and employees, and all persons claiming under them wholly from the enterprise and must have and shall hold, use, operate, manage, and control the enterprise and every part of the enterprise and, in the name of the municipality or otherwise as the receiver may consider best, shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do.

(2) The receiver shall:

(a) maintain, restore, insure, and keep insured the enterprise and from time to time make all necessary or proper repairs as may seem expedient to the receiver;

(b) establish, levy, maintain, and collect fees, tolls, rentals, and other charges in connection with the enterprise that the receiver considers necessary or proper and reasonable; and

(c) collect and must receive all revenue and deposit the revenue in a separate account and apply revenue in a manner that the court shall direct.

(3) The receiver shall, in the performance of the powers conferred upon the receiver, act under the direction and supervision of the court making the appointment and must at all times be subject to the orders and decrees of the court and may be removed by the court. This section does not limit or restrict the jurisdiction of the court to enter other and further orders and decrees that the court considers necessary or appropriate for the exercise by the receiver of any functions specifically set forth in this section.

History: En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(2), (4); amd. Sec. 514, Ch. 61, L. 2007.

7-7-4632. Procedure to return enterprise from receiver to municipality. (1) Whenever all that is due upon the refunding bonds and interest thereon and upon any other notes, bonds, or other obligations and interest thereon having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein and all defaults shall have been cured and made good, the court may in its discretion, after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality.

(2) The same right of the holders of the refunding bonds to secure the appointment of a receiver exists upon any subsequent default as provided in 7-7-4630 and 7-7-4631.

History: En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(3).

7-7-4633. Remedies of holders of refunding revenue bonds. (1) Subject to any contractual limitations binding upon the holders of an issue of refunding bonds or trustee for the holders, including but not limited to the restriction of the exercise of a remedy to the specified proportion of percentage of the holders, a holder of refunding bonds or trustee for the holder has the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) by mandamus or other suit, action, or proceeding at law or in equity, to enforce the holder's rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel the municipality or the governing body or any officers, agents, or employees to perform and carry out duties and obligations under this part and covenants and agreements with bondholders;

(b) by action or suit in equity, to require the municipality and the governing body to account as if they were the trustee of an express trust;

(c) by action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders;

(d) to bring suit upon the refunding bonds.

(2) (a) A remedy conferred by this part upon a holder of refunding bonds or a trustee for the holder is not intended to be exclusive of any other remedy, but each remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part or by any other law.

(b) A waiver of any default or breach of duty or contract, whether by a holder of refunding bonds or a trustee for a holder, does not extend to or affect any subsequent default or breach of duty or contract or impair any rights or remedies on the breach or contract. A delay or omission of a bondholder or a trustee for a holder to exercise any right or power accruing upon any default may not impair any right or power or be construed to be a waiver of any default or acquiescence in the default.

(c) Every substantive right and every remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as considered expedient.

(3) In case any suit, action, or proceeding to enforce any right or exercise any remedy must be brought or taken and then discontinued or abandoned or must be determined adversely to the holder of the refunding bonds or a trustee for the holder, then and in each case the municipality and the holder or trustee must be restored to their former positions and rights and remedies as if the suit, action, or proceeding had not been brought or taken.

History: **En. Sec. 15, Ch. 121, L. 1937; R.C.M. 1947, 79-1915; amd. Sec. 515, Ch. 61, L. 2007.**

CHAPTER 8
ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS

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Part 1
General Provisions Related to Local Government

7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of intent by publication as provided in 7-1-2121, may sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the county business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of the intent by publication as provided in 7-1-4127, may sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the city or town business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county may trade with or purchase from any city, town, or political subdivision any property without an appraisal of the property traded or purchased.

(b) A city or town may trade with or purchase from any county or political subdivision any property without an appraisal of the property traded or purchased.

History: (1)En. Sec. 1, Ch. 302, L. 1969; Sec. 16-1009.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 301, L. 1969; Sec. 11-964.1, R.C.M. 1947; (3)(a)En. Sec. 2, Ch. 302, L. 1969; Sec. 16-1007.1, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 301, L. 1969; Sec. 11-964.2, R.C.M. 1947; R.C.M. 1947, 11-964.1, 11-964.2, 16-1007.1, 16-1009.1; amd. Sec. 10, Ch. 349, L. 1985; amd. Sec. 17, Ch. 354, L. 2001.

7-8-102. Authorization to deed county land to other governmental entities. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

7-8-103. Authorization for governmental and public entities to take property by gift or devise. (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; Ap. p. Sec. 2, Ch. 47, L. 1927; re-en. Sec. 5668.18, R.C.M. 1935; Sec. 11-1007, R.C.M. 1947; Ap. p. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R.C.M. 1921; re-en. Sec. 5043, R.C.M. 1935; Sec. 11-1004, R.C.M. 1947; Ap. p. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; Sec. 11-1005, R.C.M. 1947; R.C.M. 1947, 11-1004, 11-1005(part), 11-1006(part), 11-1007.

7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.

(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; R.C.M. 1947, 11-1005(part); amd. Sec. 11, Ch. 311, L. 1979.

Part 2
Joint City-County Building

7-8-201. Acquisition or construction and management of city-county building. A city and a county may, by contract, construct, purchase, or lease and manage a city-county building to house the offices of city government and county government.

History: En. Sec. 1, Ch. 45, L. 1967; R.C.M. 1947, 11-4201.

7-8-202. Contents of contract between city and county. The contract shall provide:

(1) for the proposed expenditure for the construction, purchase, or lease of the city-county building and the proposed cost of equipping and operating the building;

(2) for the management of the building by a method which will provide that the city and county shall each be represented and have an active part in the management of the building;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purposes of this part.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-203. Division of cost. The total cost of the joint institution shall be divided between the city and county in such manner as they shall determine.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-204. Bonding authority undiminished. This part shall not be interpreted as modifying or diminishing the bonding authority of counties or cities as provided by law.

History: En. Sec. 3, Ch. 45, L. 1967; R.C.M. 1947, 11-4203.

Parts 3 through 20 reserved

Part 21
County Buildings and Equipment

7-8-2101. Provision of rooms for county purposes. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to provide suitable rooms for county purposes when there are no necessary county buildings.

History: En. Subd. 7, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.6, R.C.M. 1935; R.C.M. 1947, 16-1006.

7-8-2102. Erection and maintenance of county buildings. The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain a courthouse, jail, health care facility, civic center, youth center, park buildings, museums, recreation centers, and any combination of those buildings and any other public buildings as may be necessary.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 2, Ch. 520, L. 1995.

7-8-2103. Authorization to create county building commission. The board of county commissioners may create a building commission subject to the provisions of 7-1-201 through 7-1-203.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 3, Ch. 520, L. 1995; amd. Sec. 4, Ch. 543, L. 1995.

7-8-2104. Insurance of county buildings. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to insure the county buildings in the name of and for the benefit of the county and shall have the power to use the proceeds of any insurance policy which may be paid by reason of a loss covered thereby for the purpose of rebuilding the structure lost or damaged or, if the fire insurance proceeds are less than $25,000, for building new structures or buildings.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.15, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1953; R.C.M. 1947, 16-1018.

7-8-2105 through 7-8-2110 reserved.

7-8-2111. Inventory of county tools and equipment. The board of county commissioners shall biennially prepare and file with the county clerk and recorder an inventory covering all county tools, machinery, and equipment.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part); amd. Sec. 1, Ch. 128, L. 1997.

7-8-2112. Written agreements for loan or lease of county tools and equipment. Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

Part 22

Acquisition, Transfer, and Management of County Property

7-8-2201. Authorization for county to obtain property. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to purchase, receive by donation, or lease any real or personal property necessary for the use of the county and to preserve, take care of, manage, and control the same.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part).

7-8-2202. Appraisal required for certain purchases of real property or conservation easements. (1) Unless otherwise provided by law, a county may not purchase real property in an amount in excess of $20,000 or a conservation easement using public funds in an amount in excess of $80,000 unless the value of the property or conservation easement has been previously estimated by:

(a) a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner; or

(b) three disinterested citizens of the county appointed by the district judge.

(2) A county may not pay more than the appraised value for the real property or conservation easement.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part); amd. Sec. 1, Ch. 346, L. 1983; amd. Sec. 1, Ch. 430, L. 2003; amd. Sec. 1, Ch. 427, L. 2007.

7-8-2203 through 7-8-2210 reserved.

7-8-2211. Authorization to sell and exchange county property. (1) Boards of county commissioners of this state have the power to sell, trade, or exchange any real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment, as provided in 7-5-2301 and 7-5-2303 through 7-5-2308, county equipment that is not necessary to the conduct of the county business may be

traded in as part of the purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchange of real or personal property must be accomplished under the provisions of this title. In an exchange of real property, the properties must be appraised, and an exchange of county property may not be made unless property received in exchange for the county property is of an equivalent value. If the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.

(4) If a county owns property containing a historically significant building or monument, the county may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the county for noncompliance with conditions attached to the transfer.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 1, Ch. 547, L. 1983; amd. Sec. 1, Ch. 202, L. 1999; amd. Sec. 3, Ch. 239, L. 1999.

7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if real or personal property to be sold is reasonably of a value in excess of $2,500, the sale must be at public auction at a site determined by the board of county commissioners after notice by publication as provided in 7-1-2121. Property described in 7-8-2211(4) is not subject to the requirements of this section.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 2, Ch. 346, L. 1983; amd. Sec. 11, Ch. 349, L. 1985; amd. Sec. 1, Ch. 74, L. 1995; amd. Sec. 2, Ch. 202, L. 1999.

7-8-2213. Terms of sale. (1) Except as provided in 7-8-2211(4), a sale under this part must be for cash or on terms that the board of county commissioners may approve, provided that at least 20% of the purchase price is paid in cash. All deferred payments on the purchase price of any property sold must bear interest at the rate of 6% a year, payable annually, and may be extended over a period of not more than 5 years.

(2) Subject to 7-8-2211(4), a sale may not be made at public auction or to any school district without public auction for less than 90% of the appraised value.

(3) Subject to 7-8-2211(4), the title to any property sold under the provisions of 7-8-2211 through 7-8-2220 may not pass from the county until the purchaser or the purchaser's assigns have paid the full amount of the purchase price into the county treasury for the use and benefit of the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 3, Ch. 202, L. 1999.

7-8-2214. Appraisal required for certain sales. Unless otherwise provided:

(1) in all sales of property of a value in excess of $2,500, there must, before any sale, be an appraisal thereof by the board and at a price representing a fair market value of such property. Such appraised value shall be stated in the notice of sale.

(2) no sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within 3 months prior to the date of the sale.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 3, Ch. 346, L. 1983.

7-8-2215. Procedure to challenge appraised value. (1) A taxpayer who believes that the appraised value under 7-8-2214 is less than the actual value of the property may, at any time before the day fixed for the sale of the property, file with the board of county commissioners written objections to the appraised value.

(2) When an objection is filed, it vacates the sale and the board shall at once apply to the judge of the district court to have the property reappraised.

(3) (a) Upon application, the district judge shall appoint for purpose of reappraisal three disinterested persons or a disinterested certified real estate appraiser. Each appraiser, when appointed by the district judge and after filing the appraisal report with the county clerk and recorder, must be allowed necessary and actual expenses as determined by the judge.

(b) The appraisal of the persons appointed under subsection (3)(a) must be made and filed with the county clerk and recorder. The new appraisal or reappraisal must be used in the next sale of the property.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 16, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) after "appraised value" inserted "under 7-8-2214"; in (3)(a) in first sentence inserted "or a disinterested certified real estate appraiser", in second sentence after "allowed" deleted "$5 per day for each day necessarily employed in making such appraisal and their", and at end inserted "as determined by the judge"; and made minor changes in style. Amendment effective October 1, 2009.

7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of $2,500, notice of the sale shall be given by publication as provided in 7-1-2121.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(2); amd. Sec. 4, Ch. 346, L. 1983; amd. Sec. 12, Ch. 349, L. 1985.

Cross-References

Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

7-8-2217. Procedure for sale of property of lesser value. (1) If the property to be sold is valued at less than $2,500, it may be sold at either a public or private sale as the board of county commissioners determines to be to the best interests of the county.

(2) If the property is sold at public sale, notice must be given as provided in 7-1-2121.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 5, Ch. 346, L. 1983; amd. Sec. 18, Ch. 354, L. 2001.

7-8-2218. Procedure if property not sold at public auction. After notice and appraisal are given as provided in 7-8-2212 and 7-8-2214, if no bid or offer is made for any property offered for sale at public auction, the board of county commissioners may, at any time after the auction, sell the property at private sale and may at the private sale accept as the purchase price an amount not less than 70% of the appraised value of the property.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 3, Ch. 547, L. 1983; amd. Sec. 6, Ch. 18, L. 1995.

7-8-2219. Exchange or donation of county land — failure to make sale. (1) If within 1 year real estate attempted to be sold under the provisions of 7-8-2211 through 7-8-2220 is not sold, the board of county commissioners may make trades or exchanges of the real estate owned by the county for any other land or real estate of equal value located within the same county.

(2) In lieu of the procedure in subsection (1), the board of county commissioners may donate the land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(3) Land that is transferred pursuant to subsection (2) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(5); amd. Sec. 1, Ch. 170, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 170 inserted (2) providing that in lieu of sale county commissioners may donate or sell land at a reduced price to a corporation for construction of multifamily or single-family housing or other improvements that enable corporation to pursue corporate purposes; inserted (3) providing that land transferred pursuant to subsection (2) must be used to provide low-income housing and may be subject to reversionary clause; and made minor changes in style. Amendment effective July 1, 2009.

7-8-2220. Use of proceeds of property disposition. The funds derived from property disposed of in accordance with 7-8-2211, in the discretion of the board of county commissioners, may be credited to any account that is in the best interest of the county.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(6); amd. Sec. 2, Ch. 547, L. 1983.**

7-8-2221 through 7-8-2230 reserved.

7-8-2231. Authorization to lease county property. (1) The board of county commissioners has jurisdiction and power, under limitations and restrictions that are prescribed by law, to lease and transfer county property, however acquired, that is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. The leases must be made in a manner and for purposes that, in the judgment of the board, are best suited to advance the public benefit and welfare.

(2) Except as provided in 7-8-2233 and 7-32-2201(5):

(a) all property must be leased subject to sale by the board; and

(b) a lease may not be for a period to exceed 10 years.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part); amd. Sec. 1, Ch. 21, L. 2007.**

7-8-2232. Distribution of lease revenue. (1) All revenue derived from leases authorized by 7-8-2231, except as otherwise provided, must be paid to the county treasurer and may be deposited in the county general fund.

(2) The revenue described in subsection (1) may be used for any county purpose, including maintaining or preserving leased property.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part); amd. Sec. 1, Ch. 15, L. 1993; amd. Sec. 1, Ch. 78, L. 1997.**

7-8-2233. Special provisions relating to coal leases. (1) Leases for deposits of coal only or for coal and the surface above the same owned by any county or to which any county acquires title by tax title, tax deed, or otherwise may be for a period of 10 years and as long thereafter as coal is being mined and extracted from the leased property in commercial quantities.

(2) As to all such deposits of coal only or coal and surface, the provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made under 7-8-2231 shall be in force and effect.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).**

Part 23
Sale of Tax-Deed Land

Part Cross-References

Tax sales, Title 15, ch. 17.

7-8-2301. Disposal of county tax-deed land. (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:

(a) sell the land at public auction;

(b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;

(c) donate the land or sell the land at a reduced price to a corporation as provided in subsection (3); or

(d) retain the land for the county as provided in subsection (3).

(2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:

(a) sell the land as provided in subsections (2) and (4);

(b) donate the land to a municipality with the consent of the municipality;

(c) donate the land or sell the land at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements;

(d) retain the land for the county pursuant to 7-8-2501.

(4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land determined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the sales price that was fixed for the original auction under subsection (1)(a).

(5) If a bid is not received at the sale conducted under subsection (4), the board may dispose of the land as provided in 7-8-2218.

(6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

(7) Land that is transferred pursuant to subsection (3)(c) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: **En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part); amd. Sec. 1, Ch. 617, L. 1987; amd. Sec. 6, Ch. 704, L. 1989; amd. Sec. 1, Ch. 185, L. 1991; amd. Sec. 1, Ch. 496, L. 1991; amd. Sec. 1, Ch. 316, L. 1993; amd. Sec. 1, Ch. 369, L. 1993; amd. Sec. 1, Ch. 280, L. 1995; amd. Sec. 1, Ch. 248, L. 1999; amd. Sec. 2, Ch. 170, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 170 throughout section in five places before "corporation" deleted "nonprofit"; in (1)(c) and (3)(c) after "land" inserted "or sell the land at a reduced price"; in (3)(c)(i) at end inserted "for low-income housing"; and inserted (7) providing that land transferred pursuant to subsection (3)(c) must be used for low-income housing and may be subject to reversionary clause. Amendment effective July 1, 2009.

7-8-2302. Notice of disposal of tax-deed lands. (1) Notice of the sale, donation, or retention of tax-deed lands provided for in 7-8-2301 must be given by publication as provided in 7-1-2121.

(2) The notice must be signed by the county clerk and must include a list of all lands to be sold, donated, or retained, the fair market value of the lands as determined and fixed by the department of revenue, and the time and place of sale, donation, or retention. If the land is to be sold, the sales price as determined under 7-8-2301 must be stated in the published notice of sale.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part); amd. Sec. 13, Ch. 349, L. 1985; amd. Sec. 2, Ch. 280, L. 1995; amd. Sec. 19, Ch. 354, L. 2001.

7-8-2303. Repurchase rights of taxpayer or successors. At any time up to 24 hours before the time fixed for the first offering of property for sale or the time fixed for the donation or retention of the property pursuant to 7-8-2301, the taxpayer or the taxpayer's successor in interest or legal representative may repurchase the property from the county. The property may be repurchased, subject to the reservations provided for in 7-8-2305, by payment to the county of the full amount of the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase. The purchase and payment may be effected by an installment contract with annual payments as provided for in 7-8-2304.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part); amd. Sec. 1, Ch. 97, L. 1993; amd. Sec. 3, Ch. 280, L. 1995.

7-8-2304. Terms for sale of tax-deed land. (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate of major New York banks, as published in the Wall Street Journal within 7 days prior to the date of sale.

(b) If a sale is made on terms, the presiding officer of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part); amd. Sec. 7, Ch. 704, L. 1989; amd. Sec. 1, Ch. 674, L. 1991; amd. Sec. 516, Ch. 61, L. 2007.

7-8-2305. Deed of conveyance — reservation of mineral royalty. (1) Subject to the provisions of subsection (2), upon payment of the purchase price in full, together with all interest that may become due on any installment or deferred payments, the presiding officer of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser or the purchaser's assigns or other instruments that are sufficient to convey all of the title of the county in and to the property sold.

(2) The county may in the discretion of the board reserve not to exceed 6 $\frac{1}{4}$% royalty interest in the oil, gas, other hydrocarbons, and minerals produced from the land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part); amd. Sec. 517, Ch. 61, L. 2007.

Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

7-8-2306. Distribution of sale and lease proceeds. The proceeds of each sale or lease under this part or part 25 must be paid over to the county treasurer, who shall apportion and distribute the proceeds in the following manner:

(1) (a) Upon a sale of the property, the proceeds of each sale must be credited to the county general fund for reimbursement of expenditures made from it in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there is any money remaining after the payment of the amount specified in subsection (1)(a) and the remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the general fund of the county; or

(ii) less in amount than the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.

(2) If tax-deed lands have been sold and the county has reserved a royalty interest, any sums of money received from the royalty interest must be credited to the general fund of the county, except that the board of county commissioners may allocate to the county road fund not more than 50% of the money received from reserved royalty interests.

(3) Upon a lease of the property, except as otherwise provided, the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, must be apportioned on the current year's levy and must be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands.

History: En. Sec. 6, Ch. 171, L. 1941; amd. Sec. 1, Ch. 81, L. 1943; amd. Sec. 1, Ch. 144, L. 1955; R.C.M. 1947, 84-4195; amd. Sec. 2, Ch. 105, L. 1979; amd. Sec. 1, Ch. 675, L. 1991.

Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

7-8-2307. Tax liability of purchased tax-deed lands. (1) On January 1 following the execution of a contract or deed, the land is subject to taxation in the name of the purchaser or the purchaser's assignee.

(2) If the taxes are not paid and become delinquent, the contract is subject to cancellation and all payments made must be regarded as rent for the property.

History: En. Sec. 3, Ch. 171, L. 1941; amd. Sec. 14, Ch. 388, L. 1975; R.C.M. 1947, 84-4192; amd. Sec. 518, Ch. 61, L. 2007.

7-8-2308. Sale or donation of land of less than fifty dollar valuation and other than tax-deed land. (1) Property belonging to the county of the value of less than $50 and property of the county acquired by means other than by tax deed may be:

(a) sold as provided by 7-8-2211 through 7-8-2220. Except to the extent that those sections may conflict with the provisions of this part, 7-8-2211 through 7-8-2220 remain in force and effect. This section may not be construed as repealing 7-8-2401 through 7-8-2403.

(b) donated or sold at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(2) Land that is transferred pursuant to subsection (1)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: En. Sec. 8, Ch. 171, L. 1941; R.C.M. 1947, 84-4197; amd. Sec. 3, Ch. 170, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 170 inserted (1)(b) providing that county may donate or sell certain property to a corporation for construction of multifamily or single-family housing for low-income housing or other improvements that enable corporation to pursue corporate purposes; inserted (2) providing that land transferred pursuant to subsection (1)(b) must be used for low-income housing and may be subject to reversionary clause; and made minor changes in style. Amendment effective July 1, 2009.

Part 24
Exchange of Tax-Deed Land With United States

7-8-2401. Authorization to exchange tax-deed land with United States for certain purposes. (1) All real property acquired by any county under tax title which in the judgment of the board of county commissioners is suitable for the production of trees or as a watershed or for other national forest purposes may be conveyed by deed to the United States by the board in exchange for government land or timber, if in the discretion of the board it is to the advantage and best interests of the county to make such exchange.

(2) The board is hereby authorized to accept from the United States for and on behalf of the county, as full compensation for such county land so exchanged, title to land or timber of the United States equal in value to the appraised value of the county land so exchanged for the same.

(3) No public notice of the intention to convey title to the United States to any of the property subject to this part shall be necessary. The board shall have authority to defray all expenses necessarily incident to such exchange.

History: (1), (2)En. Sec. 1, Ch. 150, L. 1935; re-en. Sec. 4487.2, R.C.M. 1935; Sec. 16-1132, R.C.M. 1947; (3)En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; Sec. 16-1135, R.C.M. 1947; R.C.M. 1947, 16-1132, 16-1135(part).

7-8-2402. Disposal of land and timber acquired by county pursuant to exchange agreement with United States. (1) Any timber acquired from the United States in any exchange may be disposed of by the county commissioners by agreement with the United States department of agriculture that the timber must be cut and removed by any agency selected by the United States department of agriculture, with the understanding that the stumpage payments for timber cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States. The amount of the stumpage payments must equal the appraised value of the county land exchanged for timber, and the cash payments must be deposited in the county treasury for the use of the county.

(2) All land and all timber not subject to the arrangement authorized in subsection (1) and acquired by the county under the provisions of this part may be:

(a) sold by the board of county commissioners in the manner provided by law for the sale of county property, and the proceeds of the sale must be deposited in the county treasury for the use of the county; or

(b) donated or sold at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(3) Land that is transferred pursuant to subsection (2)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: (1)En. Sec. 2, Ch. 150, L. 1935; re-en. Sec. 4487.3, R.C.M. 1935; Sec. 16-1133, R.C.M. 1947; (2)En. Sec. 3, Ch. 150, L. 1935; re-en. Sec. 4487.4, R.C.M. 1935; Sec. 16-1134, R.C.M. 1947; R.C.M. 1947, 16-1133, 16-1134; amd. Sec. 4, Ch. 170, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 170 inserted (2)(b) providing that county may donate or sell certain property and timber to a corporation for construction of multifamily or single-family housing for low-income housing or other improvements that enable corporation to pursue corporate purposes; inserted (3) providing that land transferred pursuant to subsection (2)(b) must be used for low-income housing and may be subject to reversionary clause; and made minor changes in style. Amendment effective July 1, 2009.

7-8-2403. Effect of conveyance of land to United States. The execution by the board of county commissioners of a deed of conveyance to the United States of any county land conveyed under this part shall operate to discharge and cancel all tax levies, tax liens, and special assessments of every sort and kind against such land and to convey all of the county's title to such lands at the time of the execution of said deed.

History: En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; R.C.M. 1947, 16-1135(part).

Part 25
Classification and Alternative Management of County Lands

Part Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

7-8-2501. Purposes of part. The purposes of this part are:

(1) to authorize a board of county commissioners to establish criteria for the classification of unsold tax-deed lands and other county-owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county-owned lands shall be used in the best interests of the county and for the public benefit and welfare;

(2) to encourage the application of a multiple-use principle in the utilization and administration of such lands so that the administration of lands classified for retention can be coordinated with land use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple-use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare; and

(3) to grant sufficient powers to the board to enable the board to achieve the foregoing purposes.

History: En. 84-4190.1 by Sec. 1, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.1.

7-8-2502. Application of part. (1) Any land offered for sale by the county commissioners of any county pursuant to 7-8-2301 and not sold at the sale, any land classified for retention by the county, any land concerning which the preferential right to purchase has been terminated and barred pursuant to the provisions of 7-8-2303, and any other land owned by the county, however acquired, may, in the discretion and at the election of the board, be:

(a) administered by the board under this part; or

(b) donated or sold at a reduced price to a corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation for low-income housing;

(ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(2) The board may in its discretion elect to exercise any of the powers and authority granted to it by this part, and to the extent that the board elects, the provisions of this part are controlling and supersede all conflicting provisions of other laws.

(3) The sale, exchange, lease, donation, or issuance of licenses and permits of county land as provided in this part extends only to land not necessary to the conduct of the county's business.

(4) Land that is transferred pursuant to subsection (1)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: (1), (2)En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; Sec. 84-4192.1, R.C.M. 1947; (3)En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; Sec. 84-4192.2, R.C.M. 1947; R.C.M. 1947, 84-4192.1(part), 84-4192.2(part); amd. Sec. 4, Ch. 280, L. 1995; amd. Sec. 5, Ch. 170, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 170 inserted (1)(b) providing that board may donate or sell certain property to a corporation for construction of multifamily or single-family housing for low-income housing or other improvements that enable corporation to pursue corporate purposes; in (3) near beginning after "lease" inserted "donation"; inserted (4) providing that land transferred pursuant to subsection (1)(b) must be used for low-income housing and may be subject to reversionary clause; and made minor changes in style. Amendment effective July 1, 2009.

7-8-2503. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of county commissioners.

(2) "Multiple use" means:

(a) the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the county;

(b) the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(c) the use of some land for less than all of the resources;

(d) the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land and with consideration being given to the relative values of the various resources and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output; and

(e) the use of said lands, where possible, to afford access in multiple-use areas to federal and state lands.

History: En. 84-4190.2 by Sec. 2, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.2.

7-8-2504. Classification of county land. The board may:

(1) establish criteria for the classification of the land referred to in 7-8-2502(1)(a);

(2) classify the land, surface and subsurface, for retention or disposal and for purposes and uses that the board may determine are in the best interests of the county and for the public benefit and welfare. In classifying the land, the board shall consider the multiple-use potential of the land and the potential of the land as access to other intermingled or adjacent multiple-use land or areas.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(a), (b); amd. Sec. 6, Ch. 170, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 170 in (1) at end substituted "7-8-2502(1)(a)" for "7-8-2502(1)"; and made minor changes in style. Amendment effective July 1, 2009.

7-8-2505. Rules for administration of county lands. The board may promulgate rules for the administration of such lands.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(i).

7-8-2506. Advisory committee. The board may appoint not less than three or more than five residents of the county to act as an advisory committee to the board in implementing the provisions of this part. The duties of the advisory committee are to be established by the board. The board may provide for the payment of expenses incurred by the advisory committee in the carrying out of their duties.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(7).

7-8-2507. Land management alternatives. The board may:

(1) (a) grant permits or licenses to use the lands in the manner that the board determines and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of the permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of natural resources and conservation;

(3) trade or exchange the lands with individuals or other state or federal governmental agencies, pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for the purposes and uses that the board determines are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of the leases and the consideration to be paid by any lessee; and

(5) sell the lands or any part of the lands pursuant to the procedures provided in this part.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 24, Ch. 418, L. 1995.

7-8-2508. Details relating to leases, permits, and licenses. (1) A lease of lands under this part shall not be made for a consideration less than an amount equal to the taxes these lands would have levied upon them if they were private lands.

(2) Leases, permits, and licenses shall not extend for a period longer than 10 years, except that oil, gas, and other mineral leases may be for a term of 10 years and as long thereafter as oil, gas, or other minerals are produced in commercial quantities. However, the board may provide for the renewal of such leases, permits, and licenses.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

7-8-2509. Improvements on leaseholds. (1) The board may authorize a lessee to place upon the lands improvements directly related to conservation of the land or necessary for proper utilization of the land for the purposes for which it is leased.

(2) (a) Whenever another person becomes the lessee of such land, such other persons shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession of such lands. The former lessee may, at the former lessee's option, remove or dispose of the movable improvements, but the same must be removed within 60 days from the date of the expiration of the lease. If not so removed, then all such improvements shall become the property of the county unless the board for good cause grants additional time for the removal thereof. Before a lease is issued to the new lessee, the new lessee shall show that the former lessee has been paid the value of the improvements as agreed upon by them or as fixed and determined as herein provided or that the former lessee has elected to remove the improvements.

(b) In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained by three arbitrators. One of the arbitrators shall be appointed by the former lessee, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the former lessee and the new lessee. The value of the improvements so ascertained and fixed by the arbitrators shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, the dissatisfied party may, within 10 days of being notified of the arbitrators' decision, appeal from that decision to the board. The decision of the board shall be final. Any costs incurred by the board in reexamining the decision of the arbitrators shall be borne by the former lessee and the new lessee in such proportions as the board may determine.

(3) The provisions of this section shall apply to the holders of permits or licenses for the use of county lands.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(3), (4).**

7-8-2510. Special provisions relating to oil and gas development. (1) Subject to the provisions of subsection (2), when considered in the best interests of the county, the board may:

(a) enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on acreage or other equitable basis; and

(b) modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation.

(2) Such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(8).**

Cross-References

Oil and gas development on state land, Title 77, ch. 3, part 4.

Oil and gas — lease of local government land, Title 82, ch. 10, part 2.

7-8-2511. Procedure for sale of county lands. (1) The board shall make an order for public auction of any lands classified for sale. Such sale shall be held at the front door of the county courthouse.

(2) Notice of the sale shall be given by publishing notice as provided in 7-1-2121. The notice shall describe the land to be sold and the appraised value thereof.

(3) No sale may be made for less than the appraised value of the land, as fixed by the board. The sale shall be for cash or on such terms as the board may approve provided at least 20% of the purchase price shall be paid in cash.

(4) The lessee, permittee, or licensee of any of the lands then subject to a lease, permit, or license shall have a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(5); amd. Sec. 14, Ch. 349, L. 1985.**

7-8-2512. Procedure to exchange county lands. (1) Any of the lands classified for exchange by the board may be exchanged for any other lands pursuant to such procedures as the board may adopt. Any procedures adopted by the board for the exchange of land must include public notice as provided under 7-8-2511 and opportunity for public hearing on the proposed exchange.

(2) All such exchanges must be for equivalent value. If the lands sought to be exchanged are not of equivalent value, any difference may be equalized by a cash payment.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(6).**

7-8-2513. Appraisal of land required — exception. (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause the lands to be appraised by a qualified, independent person, who may be but is not required to be an employee of the department of revenue, to determine the value of the lands for the purpose of the sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease is considered an initial lease if the renewal is for a term exceeding 5 years.

(3) The board of county commissioners may lease mineral interests in land, whether the interests are severed or not, without an appraisal as required by subsection (1).

History: **En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.2(part); amd. Sec. 1, Ch. 391, L. 1983; amd. Sec. 13, Ch. 27, Sp. L. November 1993.**

7-8-2514. Reservations of interest by county. (1) When granting a lease for oil, gas, or other mineral exploration or development, the board may reserve to the county a royalty interest as fixed by agreement between the board and the lessee.

(2) In trading, exchanging, or selling such lands, the board may make such reservations in favor of the county as the board considers proper, including but not limited to reserving to the county of any or all oil, gas, or other mineral or royalty interests; sand, gravel, clay, or other material; rights-of-way or easements for roads, utility lines, and other purposes or uses.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

7-8-2515. Apportionment and distribution of revenues from land. All proceeds from any use or disposition of lands pursuant to the terms of this part shall be apportioned and distributed according to the provisions of 7-8-2306.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

Part 26
County Forests

Part Cross-References

State forests, Title 77, ch. 5, part 1.

7-8-2601. Protection of forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: **En. Sec. 105, Ch. 147, L. 1909; re-en. Sec. 4470, R.C.M. 1921; re-en. Sec. 4470, R.C.M. 1935; R.C.M. 1947, 16-1104.**

7-8-2602. Authorization to create county forests. (1) The board of county commissioners of any county in Montana is hereby authorized to create county forests from any lands in such county which:

(a) are principally valuable for the timber thereon or for the growing of timber; and

(b) have been acquired by such county by tax deed and have been offered for sale at public auction and not sold or have been acquired by such county by exchange for lands acquired by tax deed.

(2) Such county forests shall be established by resolution of the board and may be discontinued by resolution of said board.

History: **En. Sec. 1, Ch. 70, L. 1945; R.C.M. 1947, 28-501.**

7-8-2603. Exchange of tax-deed lands for timber lands. After any lands acquired by the county by tax deed have been offered for sale at public auction and not sold, the board of county commissioners may exchange such lands for other lands which are principally valuable for the timber thereon or for the growing of timber if, in the opinion of such board, it is in the best interests of such county to acquire such other lands for the purpose of creating county forests or for the purpose of consolidating such lands with then-existing county forests.

History: En. Sec. 2, Ch. 70, L. 1945; R.C.M. 1947, 28-502.

7-8-2604. Procedure for sale of timber or other crops. (1) Subject to the requirements of subsection (2), the board of county commissioners may sell the timber crop and other crops of county forests under such rules as it may establish. The board may reject any or all bids, or it may award the sale to the highest responsible bidder.

(2) A notice of any proposed sale of timber in excess of 100,000 feet board measure shall be advertised at least once in a newspaper published in the county at least 30 days prior to the closing of bids as specified in said notice. The board shall receive sealed bids up to the hour of the closing of bids.

History: En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).

7-8-2605. Formal sale agreement. (1) Upon award of sale, the purchaser shall execute a formal agreement.

(2) The formal agreement shall:

(a) describe the area on which the timber is to be cut, the approximate amount to be cut by species, and the rate for each product of each species;

(b) stipulate that all timber shall be paid for in advance of cutting;

(c) fix a date for termination of the agreement;

(d) define rules of silviculture, cutting, utilization, scaling, and slash disposal; and

(e) incorporate such other rules as in the discretion of the board of county commissioners are essential to the perpetuation of the county forests.

History: En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).

7-8-2606. Bond to insure performance of agreement. As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient securities, to the county in an amount equal to at least 20% of the estimated value of the timber sold.

History: En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).

7-8-2607. Procedure upon breach of agreement. Upon breach of any timber sale agreement, the board of county commissioners is authorized to suspend cutting or removal of the timber and, upon advice and counsel of the county attorney, to take such steps as are deemed by it necessary to adjust the breach or to liquidate the county's claim for damages or to submit the case to the county attorney for collection on the bond.

History: En. Sec. 4, Ch. 70, L. 1945; R.C.M. 1947, 28-504.

7-8-2608. Permits for domestic use of dead and down timber. Permits may be issued free of charge to residents and settlers of the county for dead, down, or inferior timber for fuel and domestic purposes, in such quantities and under such restrictions and regulations as the board of county commissioners may approve.

History: En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).

7-8-2609. Permits for small commercial timber harvest. Permits may be issued to citizens of Montana for commercial purposes at commercial rates without advertising, under such restrictions and rules as the board of county commissioners may approve, for timber in quantities of 100,000 feet board measure or less. Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).

7-8-2610. Distribution of proceeds of timber sales. The proceeds of every such sale or of the issuance of any such permit shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

(1) The proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the holding of such sale or the issuance of such permit.

(2) If there shall be any amount remaining of such proceeds and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

(3) If there shall be any amount remaining of such proceeds and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

History: En. Sec. 6, Ch. 70, L. 1945; R.C.M. 1947, 28-506.

7-8-2611. Construction of part. Nothing in this part shall be construed as repealing part 23 of chapter 8 or Title 76, chapter 13, parts 1 and 2.

History: En. Sec. 7, Ch. 70, L. 1945; R.C.M. 1947, 28-507.

Part 27
County Land Advisory Boards

7-8-2701. State policy for resource management. It is the policy of the state of Montana:

(1) to promote the conservation of the natural resources of the state;

(2) to provide for the conservation, protection, and development of forage plants and for the beneficial use of forage plants for grazing by livestock, under regulations that may be considered necessary;

(3) to put into crop production only properly fitted lands;

(4) to encourage the storage and conservation of water for livestock and irrigation;

(5) to place the farming and livestock industries upon a permanent and solid foundation;

(6) to extend preference in sales and leases of lands to resident farmers, stockgrowers, and taxpayers; and

(7) to gradually restore to private ownership the immense areas of lands that have passed into county ownership because of tax delinquencies.

History: En. Sec. 5, Ch. 67, L. 1933; re-en. Sec. 4573.5, R.C.M. 1935; R.C.M. 1947, 16-1505; amd. Sec. 519, Ch. 61, L. 2007.

7-8-2702. Definitions. (1) In this part, the term "board" shall mean the county land advisory board.

(2) In this part, the term "lands" shall mean all lands now owned by the respective counties which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs.

History: En. Sec. 2, Ch. 67, L. 1933; re-en. Sec. 4573.2, R.C.M. 1935; R.C.M. 1947, 16-1502.

7-8-2703. Creation of county land advisory boards. (1) There is hereby created in each county a department of county government of the state of Montana, to be known and designated as "the county land advisory board".

(2) The general purposes of this department shall be to cooperate with the board of county commissioners of each county in administering lands belonging to the respective counties.

History: En. Sec. 1, Ch. 67, L. 1933; re-en. Sec. 4573.1, R.C.M. 1935; R.C.M. 1947, 16-1501.

7-8-2704. Membership of land advisory board. The board of each county shall consist of five residents of the county to be appointed by the judge of the district court.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 12, Ch. 311, L. 1979.

7-8-2705. Term of office of board members. (1) The citizen members first appointed pursuant to 7-8-2704 serve the following terms:

(a) two for a 2-year term;

(b) two for a 4-year term; and

(c) one for a 6-year term.

(2) On the expiration of the terms of the initial appointees, the succeeding members shall be appointed for the term of 6 years.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 13, Ch. 311, L. 1979.

7-8-2706. Compensation of board members. The members shall serve without pay.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part).

7-8-2707. Organization of board — conduct of business. (1) The board shall select a presiding officer from its members. The county clerk is the clerk of the board.

(2) The board shall hold regular meetings on the first Wednesday following the first Monday of each month and may hold meetings whenever considered necessary upon a call of the presiding officer or a majority of the members. Three members of the board constitute a quorum for the transaction of business. The board may adopt rules it considers proper for the conduct of its meetings.

(3) The county clerk, as clerk of the advisory board, shall keep the minutes of all meetings and is custodian of all its records. The board shall keep a record of the minutes of all meetings in a suitable book, provided by the board of county commissioners for that purpose, and preserve all important documents, maps, plats, and papers.

History: En. Sec. 4, Ch. 67, L. 1933; re-en. Sec. 4573.4, R.C.M. 1935; R.C.M. 1947, 16-1504; amd. Sec. 520, Ch. 61, L. 2007.

7-8-2708. Function of land advisory board. (1) The board shall advise boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange, and disposition of all lands, when so requested by said board of county commissioners.

(2) The board may recommend the examination, classification, and appraisal of such lands as in its opinion have not previously been properly examined, classified, and appraised.

(3) The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: (1)En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; Sec. 16-1503, R.C.M. 1947; (2)En. Sec. 6, Ch. 67, L. 1933; re-en. Sec. 4573.6, R.C.M. 1935; Sec. 16-1506, R.C.M. 1947; (3)En. Sec. 9, Ch. 67, L. 1933; re-en. Sec. 4573.9, R.C.M. 1935; Sec. 16-1509, R.C.M. 1947; R.C.M. 1947, 16-1503(part), 16-1506, 16-1509.

7-8-2709. Grazing and agricultural uses of county lands. (1) The board may cooperate with boards of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts whereby county lands may be leased either on a per-head or per-acre basis.

(2) The board may act in an advisory capacity in fixing the fees, terms, and conditions of grazing and agricultural leases.

History: (1)En. Sec. 7, Ch. 67, L. 1933; re-en. Sec. 4573.7, R.C.M. 1935; Sec. 16-1507, R.C.M. 1947; (2)En. Sec. 8, Ch. 67, L. 1933; re-en. Sec. 4573.8, R.C.M. 1947; Sec. 16-1508, R.C.M. 1947; R.C.M. 1947, 16-1507, 16-1508.

Parts 28 through 40 reserved

Part 41
Municipal Buildings

7-8-4101. Construction, lease, and management of municipal buildings. The city or town council has power to build or hire all necessary buildings for the use of the city or town and to heat and light the same.

History: En. Subd. 5, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.4, R.C.M. 1935; R.C.M. 1947, 11-905.

Part 42
Disposal and Lease of Municipal Property

7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, donate, or lease any property belonging to the city or town.

(2) (a) Except for property described in subsection (3), the lease, donation, or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223.

(5) A city or town may donate land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: En. Subd. 62, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.61, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1937; R.C.M. 1947, 11-964; amd. Sec. 14, Ch. 311, L. 1979; amd. Sec. 1, Ch. 305, L. 1993; amd. Sec. 38, Ch. 387, L. 1995; amd. Sec. 4, Ch. 202, L. 1999; amd. Sec. 7, Ch. 170, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 170 in (1) after "dispose of" inserted "donate"; in (2)(a) after "lease" inserted "donation"; inserted (5) providing that city or town may donate or sell certain property to a corporation for construction of multifamily or single-family housing for low-income housing or other improvements that enable corporation to pursue corporate purposes; inserted (6) providing that land transferred pursuant to subsection (5) must be used for low-income housing and may be subject to reversionary clause; and made minor changes in style. Amendment effective July 1, 2009.

CHAPTER 9
RESERVED

CHAPTER 10
REGIONAL RESOURCE AUTHORITIES

Part 1 — Creation—Expansion—Powers

7-10-101. Regional resource authorities — purpose.
7-10-102. Authorization to create or expand regional resource authorities.

7-10-103. Regional resource authority or expansion — notice of petition — hearing.
7-10-104. Regional resource authority or expansion — election required — notice.
7-10-105. Resolution creating or expanding regional resource authority upon favorable vote.
7-10-106. Regional resource authority — certificate of incorporation or expansion from secretary of state.
7-10-107 through 7-10-109 reserved.
7-10-110. Governing body of regional resource authority.
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Part 2 — Project—Funding

7-10-201. Regional resource authority projects — definition.
7-10-202. Role of state agencies.
7-10-203 and 7-10-204 reserved.
7-10-205. Authority to issue revenue bonds.
7-10-206. Determination of cost.
7-10-207. Nature of revenue bonds.
7-10-208. Projects to be self-supporting.
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7-10-215. Covenants in resolution authorizing issuance of bonds.
7-10-216. Remedies.
7-10-217. Presumption of validity of bonds.
7-10-218. Liens arising from bonds.
7-10-219. Details relating to revenue bonds.
7-10-220. Sale of bonds.
7-10-221. Notice of sale of bonds.
7-10-222. Interim receipts or certificates.

Chapter Compiler's Comments

Effective Date: Section 31, Ch. 351, L. 2009, provided that this chapter is effective April 24, 2009.

Part 1
Creation — Expansion — Powers

7-10-101. Regional resource authorities — purpose. (1) Electors residing within the boundaries of a proposed regional resource authority may create or expand an authority by proceeding under the provisions of this chapter.

(2) Regional resource authorities may be created to provide for collaboration and coordination in the conservation of water resources or in the management of water resources for agricultural and recreational uses.

History: En. Sec. 1, Ch. 351, L. 2009.

7-10-102. Authorization to create or expand regional resource authorities. (1) A petition requesting the establishment or expansion of a regional resource authority must be signed by at least 10% of the registered electors within the boundaries of the territory proposed to be organized into the authority or expansion and must be presented to the board of county commissioners of the county in which the proposed authority or expansion is located.

(2) When the area to be included within the proposed authority or expansion lies in more than one county, the electors within the proposed area shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 10% of the registered electors within the boundaries of the proposed authority or expansion that lies within that county.

(3) The petition must include:

(a) a legal description or map of the proposed authority or expansion boundaries. Boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible and may exclude incorporated cities or towns.

(b) the proposed name of the authority;

(c) a statement that there is a need in the interest of the public health, safety, and welfare for an authority to function or expand in the territory described in the petition;

(d) a request that a referendum be held in the territories included within the proposed boundaries on the question of creating or expanding the authority; and

(e) the structure of the governing body for the authority as provided in 7-10-110.

(4) Land, water, projects, as defined in 7-10-201, or other resources within the exterior boundaries of an Indian reservation may not be included within the boundaries of a regional resource authority without the consent of the governing body of the tribe of the Indian reservation.

History: En. Sec. 2, Ch. 351, L. 2009.

7-10-103. Regional resource authority or expansion — notice of petition — hearing. (1) The board of county commissioners shall publish the text of the petition described in 7-10-102, as provided in 7-1-2121, in each county in which the proposed regional resource authority or expansion lies and shall publish the date, time, and place that a public hearing on the petition will be held.

(2) If the proposed authority or expansion lies within two or more counties, the provisions of this section apply to each county.

(3) Upon concluding the hearing on the petition, the board of county commissioners shall determine whether the petition complies with the requirements of 7-10-102 and enter its determination into the minutes of a regularly scheduled meeting.

History: En. Sec. 3, Ch. 351, L. 2009.

7-10-104. Regional resource authority or expansion — election required — notice. (1) Upon a determination that the petition complies with the provisions of 7-10-102, the board of county commissioners of each county in which the proposed regional resource authority or expansion lies shall give notice of an election to be held within the boundaries of the proposed authority or expansion for the purpose of determining whether a regional resource authority should be created or expanded. The election must be held in conjunction with a regular or primary election.

(2) Notice of the election must be made as provided in 13-1-108 and must:

(a) describe the purpose of the proposed authority or expansion; and

(b) state the name of the proposed authority.

(3) The election on the question of creating or expanding a regional resource authority must be conducted as provided by Title 13 with respect to general and school elections.

(4) If the proposed authority or expansion lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the proposed authority or expansion shall administer the election and canvass the returns.

History: En. Sec. 4, Ch. 351, L. 2009.

7-10-105. Resolution creating or expanding regional resource authority upon favorable vote. (1) If a majority of the votes cast within the proposed boundaries of the regional resource authority or expansion are in favor of creating or expanding the authority, the board of county commissioners in the county that administered the election shall, by resolution, declare the territory enclosed within the proposed boundaries or expansion duly organized as a regional resource authority.

(2) Immediately following adoption of the resolution creating or expanding the regional resource authority, the board of county commissioners shall file a copy of the resolution with the secretary of state and the county clerk and recorder.

History: En. Sec. 5, Ch. 351, L. 2009.

7-10-106. Regional resource authority — certificate of incorporation or expansion from secretary of state. Within 10 days of receiving a copy of the resolution described in 7-10-105, the secretary of state shall issue a certificate stating that the regional resource authority has been established or expanded under the laws of the state of Montana. The secretary of state shall file a copy of the certificate with the clerk and recorder in each county in which the authority is located.

History: En. Sec. 6, Ch. 351, L. 2009.

7-10-107 through 7-10-109 reserved.

7-10-110. Governing body of regional resource authority. (1) The initial members of the local governing body must be appointed by the county commissioners in the county where the election is administered pursuant to 7-10-104(4), based on the recommendations of the petitioners.

(2) The commissioners shall appoint members of the governing body to staggered 2-year and 4-year terms.

(3) The appointments under subsection (1) must be made within 30 days after the adoption of the resolution for creation provided for in 7-10-105.

(4) Prior to the expiration of the initial appointments, the governing body shall divide itself into districts from which members are elected to succeeding terms.

History: En. Sec. 7, Ch. 351, L. 2009.

7-10-111 through 7-10-114 reserved.

7-10-115. Regional resource authority — powers — limits. (1) A regional resource authority has power to:

(a) sue and be sued;

(b) purchase and hold lands within its limits;

(c) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;

(d) make orders for the disposition or use of its property that the interests of its inhabitants require; and

(e) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law;

(f) impose fees or assessments for services provided;

(g) pay debts and expenses;

(h) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(i) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(j) make grants and loans of money, property, and services for public purposes;

(k) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(l) hire, direct, and discharge employees and appoint and remove members of boards;

(m) ratify any action of the regional resource authority or its officers or employees that could have been approved in advance;

(n) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;

(o) initiate a civil action to restrain or enjoin an action adverse to the regional resource authority;

(p) enter private property, obtaining warrants when necessary, for the purpose of enforcing its authority that affects the general welfare and public safety;

(q) conduct preparatory studies;

(r) purchase insurance and establish self-insurance plans;

(s) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions;

(t) enter into interlocal agreements or other agreements with the federal government or its agencies; and

(u) issue bonds and notes for the purpose of funding projects as provided in part 2 of this chapter.

(2) A regional resource authority may not:

(a) authorize a tax on income or the sale of goods or services;

(b) regulate private activity beyond its geographic limits;

(c) impose a duty on another unit of local government, except that nothing in this limitation affects the right of a regional resource authority to enter into and enforce an agreement on interlocal cooperation;

(d) exercise any judicial function, except as an incident to the exercise of an administrative power; or

(e) exercise any power enumerated in 7-1-111.

History: En. Sec. 8, Ch. 351, L. 2009.

Part 2
Project — Funding

7-10-201. Regional resource authority projects — definition. (1) A regional resource authority may:

(a) construct, reconstruct, improve, or extend any project within the boundaries of the regional resource authority or partially within or partially outside of the boundaries, and acquire by gift, purchase, or the exercise of the right of eminent domain pursuant to Title 70, chapter 30, any project and land or rights in land or water rights in connection with the project;

(b) operate and maintain any project and furnish the service, facilities, and commodities of the project for its own use and for the use of public and private consumers within or outside of the boundaries of the regional resource authority; and

(c) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by the project.

(2) The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this part for those purposes.

(3) As used in this part, "project" means one or a combination of water systems, together with all parts of the systems and appurtenances to the systems, including but not limited to supply and distribution systems, reservoirs, dams, and treatment and disposal works.

History: En. Sec. 9, Ch. 351, L. 2009.

7-10-202. Role of state agencies. A regional resource authority acting pursuant to this part is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate a project. The supervisory powers and duties of the department of environmental quality apply to projects under this part, and the functions of the department of natural resources and conservation and the water court apply to water rights associated with projects.

History: En. Sec. 10, Ch. 351, L. 2009.

7-10-203 and 7-10-204 reserved.

7-10-205. Authority to issue revenue bonds. A regional resource authority may:

(1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project;

(2) pledge to the punctual payment of the bonds issued under this part and interest on the bonds an amount of the revenue of the project or of any part of the project sufficient to pay the bonds and interest as the bonds and interest become due and create and maintain reasonable reserves for the payments.

History: En. Sec. 11, Ch. 351, L. 2009.

7-10-206. Determination of cost. The governing body of a regional resource authority, in determining the cost for purposes of 7-10-205, may include:

(1) all costs and estimated costs of the issuance of revenue bonds, including a permissible underwriter's discount, if any;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest estimated to accrue during the construction period and for 6 months after construction on money borrowed or on money that it is estimated will be borrowed pursuant to this part.

History: En. Sec. 12, Ch. 351, L. 2009.

7-10-207. Nature of revenue bonds. (1) The holder or holders of any bonds issued under this part does not have the right to compel any exercise of taxing power of the regional resource authority to pay the revenue bonds or the interest on the bonds.

(2) Each bond issued under this part must recite in substance that:

(a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and

(b) the bond does not constitute a debt of the regional resource authority within the meaning of any constitutional or statutory limitation or provision.

History: En. Sec. 13, Ch. 351, L. 2009.

7-10-208. Projects to be self-supporting. (1) A regional resource authority issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the project and shall revise the rates, fees, or charges from time to time whenever necessary so that the project is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by the project constitute revenue of the project and may not result in a project being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds for the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the project, including reserves.

History: En. Sec. 14, Ch. 351, L. 2009.

7-10-209. Use of revenue from project. (1) A regional resource authority issuing bonds pursuant to this part for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project has the right to appropriate, apply, or expend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves; and

(c) to provide a reserve for improvements or enhancements to the project.

(2) Unless and until adequate provision has been made for the purposes of subsection (1), a regional resource authority may not transfer the revenue of the project to its general fund.

History: En. Sec. 15, Ch. 351, L. 2009.

7-10-210 through 7-10-214 reserved.

7-10-215. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the project for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property tax revenue referred to in 7-10-115;

(3) the transfer from the general fund of the regional resource authority to the account or accounts of the project of an amount equal to the cost of furnishing the regional resource authority or any of its departments or boards with the services, facilities, or commodities of the project;

(4) the issuance of other or additional bonds payable from the revenue of the project;

(5) the operation and maintenance of the project;

(6) the insurance to be carried on the project and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue arising from the project.

History: En. Sec. 16, Ch. 351, L. 2009.

7-10-216. Remedies. The provisions of this part and any resolution or resolutions are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

History: En. Sec. 17, Ch. 351, L. 2009.

7-10-217. Presumption of validity of bonds. (1) Bonds bearing the signatures of the officers of the regional resource authority in office on the date of the signing of the bonds are valid and binding obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any or all the persons whose signatures appear on the bonds have ceased to be officers of the regional resource authority issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to this part. The recital is conclusive evidence of the validity of the bonds and of the regularity of their issuance.

History: En. Sec. 18, Ch. 351, L. 2009.

7-10-218. Liens arising from bonds. The resolution or resolutions authorizing the bonds must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 19, Ch. 351, L. 2009.

7-10-219. Details relating to revenue bonds. (1) Bonds authorized to be issued under this part:

(a) must bear interest at a rate or rates not exceeding the limitation of 17-5-102;

(b) may be issued in one or more series;

(c) may bear a date or dates;

(d) may mature at a time or times not exceeding 40 years from their respective dates of issue;

(e) may be payable in a place or places;

(f) may carry registration privileges;

(g) may be subject to terms of redemption;

(h) may be executed;

(i) may contain terms, covenants, and conditions; and

(j) may be in coupon or registered form, as provided by the initial resolution or subsequent resolutions.

(2) The regional resource authority may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the project.

History: En. Sec. 20, Ch. 351, L. 2009.

7-10-220. Sale of bonds. (1) Bonds authorized to be issued under this part must be sold at a price not less than that prescribed by the governing body of the regional resource authority, plus interest to the date of delivery of the bonds.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.

(b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.

History: En. Sec. 21, Ch. 351, L. 2009.

7-10-221. Notice of sale of bonds. The notice of sale of bonds required by 7-10-220(2)(b) must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the regional resource authority may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.

History: En. Sec. 22, Ch. 351, L. 2009.

7-10-222. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions that the governing body of the regional resource authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. The bonds and interim receipts or certificates are fully negotiable, as provided by Title 30, chapter 8.

History: En. Sec. 23, Ch. 351, L. 2009.

CHAPTER 11
GENERAL PROVISIONS RELATED TO SERVICES

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Part 1
Interlocal Agreements

Part Cross-References

Intergovernmental cooperation, Art. XI, sec. 7, Mont. Const.
Contracts for detention center services, 7-32-2243.

7-11-101. Short title. This part shall be known and cited as the "Interlocal Cooperation Act".

History: En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

7-11-102. Purpose. It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History: En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

7-11-103. Definition. For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

History: En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

7-11-104. Authorization to create interlocal agreements — issuance of bonds for joint construction — hiring of teacher, specialist, or superintendent. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part); amd. Sec. 1, Ch. 397, L. 1997; amd. Sec. 2, Ch. 86, L. 1999; amd. Sec. 1, Ch. 318, L. 2001.

7-11-105. Detailed contents of interlocal agreements. The contract authorized by 7-11-104 must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created by the contract;

(3) the purpose or purposes of the interlocal contract;

(4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget for the undertaking;

(5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and, if applicable, for disposing of property upon a partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board;

(7) if applicable, the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) the contracting party responsible for reports and payment of retirement system contributions pursuant to 19-2-506;

(9) if applicable, the manner of sharing the employment of a teacher or specialist under 20-4-201, a superintendent under 20-4-401, or a professional person licensed under Title 37; and

(10) any other necessary and proper matters.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8); amd. Sec. 3, Ch. 99, L. 2001; amd. Sec. 2, Ch. 318, L. 2001.

7-11-106. Repealed. Sec. 2, Ch. 83, L. 1991.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

7-11-107. Filing of interlocal agreement. The interlocal contract made pursuant to this part must be filed with:

(1) the county clerk and recorder of the county or counties where the political agencies are situated; and

(2) the secretary of state.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10); amd. Sec. 1, Ch. 83, L. 1991.

7-11-108. Authorization to appropriate funds for purpose of interlocal agreement. Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

Part 2
Interlocal Cooperation Commission

7-11-201. Statement of policy. It is hereby declared to be the public policy of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(1).

7-11-202. Purpose. It is the purpose of this part to provide a method whereby the residents of local areas in Montana may propose local solutions to the common problems referred to in 7-11-201 in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(2).

7-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means an interlocal cooperation commission established pursuant to 7-11-204.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city, or town.

History: En. Sec. 2, Ch. 129, L. 1969; R.C.M. 1947, 11-4402.

7-11-204. Authorization for establishment of interlocal cooperation commissions. An interlocal cooperation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal cooperation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities, and towns having any jurisdiction in the county under consideration. A certified copy of the resolution or certified copies of the concurring resolutions must be transmitted to the clerk and recorder of the county, and an interlocal cooperation commission must be considered to be authorized.

(2) (a) A petition requesting the establishment of an interlocal cooperation commission must be signed by at least 10% of the qualified voters within the county registered for the preceding general election and must be filed with the clerk and recorder of the county.

(b) Upon receipt of a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures. Within 30 days following receipt of the petition, the clerk and recorder shall transmit the petition to the board of county commissioners and to the governing bodies of all cities and towns having any jurisdiction in the county, together with the clerk and recorder's certificate as to the sufficiency of the petition, and an interlocal cooperation commission must be considered to be authorized.

History: En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part); amd. Sec. 521, Ch. 61, L. 2007.

7-11-205. Limitation on number of interlocal cooperation commissions. Only one commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).

7-11-206. Term of commission. All commissions shall terminate 5 years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote (favorable to such earlier termination) of three-fourths of the members.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971; R.C.M. 1947, 11-4416.

7-11-207. Composition of commission. An interlocal cooperation commission established pursuant to this part consists of members to be selected as follows:

(1) four members selected by the county commissioners;

(2) four members appointed by the mayor of the principal city and confirmed by the governing body of the city;

(3) one member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town;

(4) one member, who must be presiding officer of the interlocal cooperation commission, selected by the other members of the commission at their initial meeting.

History: En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(1); amd. Sec. 522, Ch. 61, L. 2007.

7-11-208. Qualifications of members of commission. (1) Each member shall reside, at the time of appointment, within the county if selected by the board of county commissioners or within the city or town by which appointed.

(2) A member may not be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(2), (3); amd. Sec. 523, Ch. 61, L. 2007.

7-11-209. Time of appointment. The members of the interlocal cooperation commission shall be appointed within 60 days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969; R.C.M. 1947, 11-4405.

7-11-210. Vacancies. In case of a vacancy for any cause, a new member must be appointed in the same manner as the member being replaced.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(1); amd. Sec. 524, Ch. 61, L. 2007.

7-11-211. Compensation for members of commission. Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(2).

7-11-212. Organization of commission — meetings. (1) Not later than 80 days after the commission is authorized, the members of the commission shall meet and organize at a time that must be set by the board of county commissioners.

(2) At the first meeting of the commission, one of the members appointed by the board of county commissioners must be designated by that body to serve as temporary presiding officer. As its first official act, the commission shall select a presiding officer from outside its own membership.

(3) Further meetings of the commission must be held upon a call of the presiding officer, the vice presiding officer in the absence or inability of the presiding officer, or a majority of the members of the commission.

History: **En. Sec. 6, Ch. 129, L. 1969; R.C.M. 1947, 11-4406; amd. Sec. 525, Ch. 61, L. 2007.**

7-11-213. Conduct of business. (1) All meetings of the commission shall be open to the public.

(2) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(3) Each member shall have one vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by 7-11-230, but other actions may be by a majority of those present and voting.

(4) Each commission may adopt such other rules for its proceedings as it deems desirable.

History: **En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(3) thru (5).**

7-11-214 through 7-11-220 reserved.

7-11-221. Powers and duties of commission. A commission shall have the following powers and duties:

(1) to contract and cooperate with other public or private agencies, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out the purposes for which the commission was established;

(2) to consult and retain such experts and to employ such executive, clerical, and other staff as, in the commission's judgment, may be necessary;

(3) to accept and expend money from any public or private source, including the federal government;

(4) to do any and all other things as are consistent with and reasonably required to perform its functions under this part.

History: **En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).**

7-11-222. Management of commission finances. All money received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

History: **En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).**

7-11-223. Authorization to make appropriations for commission. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: **En. Sec. 15, Ch. 129, L. 1969; R.C.M. 1947, 11-4415.**

7-11-224. Preparation of comprehensive program. (1) The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both countywide and urban area bases, as it deems desirable.

(2) Within 3 years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and countywide services and shall provide for adequate publication and explanation of its program.

History: **(1)En. Sec. 9, Ch. 129, L. 1969; Sec. 11-4409, R.C.M. 1947; (2)En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; Sec. 11-4412, R.C.M. 1947; R.C.M. 1947, 11-4409, 11-4412(part).**

7-11-225. Considerations in preparation of proposals. (1) A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics, and predominantly rural areas.

(2) In the formation of its proposals, which can include arrangements for countywide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(a) the existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use wherever possible of comprehensive land use plans prepared for the area by organized planning boards or other reliable surveys;

(b) the need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(c) population density, distribution, and growth; per capita assessed valuation; and the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(d) the boundaries of existing units of local government;

(e) maintenance of citizen access to, control of, and participation in local government;

(f) such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969; R.C.M. 1947, 11-4408.

7-11-226. Consideration of property and debts. The commission shall:

(1) determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and countywide services; and

(2) determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969; R.C.M. 1947, 11-4411.

7-11-227. Furnishing of information to commission. Upon request of the presiding officer of the commission, all state agencies, all counties and other units of local government, and the officers and employees of those entities shall furnish the commission with information that may be necessary for carrying out its functions and that may be available to or procurable by the agencies or units of government.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part); amd. Sec. 526, Ch. 61, L. 2007.

7-11-228. Public hearings on proposed program — notice. Notice of hearings shall be published as provided in 7-1-2121.

History: En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; R.C.M. 1947, 11-4412(part); amd. Sec. 15, Ch. 349, L. 1985.

7-11-229. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) performance of one or more services by any existing unit of local government;

(2) consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies, or by contractual agreements;

(3) consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) annexation of unincorporated territory to any existing city or town;

(6) consolidation of any existing cities and towns with any other existing cities and towns;

(7) consolidation of any cities and towns with the county in which they lie;

(8) creation of a permanent council of governments consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) creation of a unified government for the entire county, vested with:

(a) any and all powers which cities are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana; and

(b) any and all powers which counties are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana;

(10) any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of Montana.

History: En. Sec. 10, Ch. 129, L. 1969; R.C.M. 1947, 11-4410.

7-11-230. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes the consolidation or transfer of the administrative and financial responsibilities for services between or among municipalities and counties, the commission shall make public its recommendation to the electorate of the local governments for referenda as provided for in 7-11-302.

(3) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(4) If the comprehensive plan includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of Montana, the commission shall make such recommendation or recommendations to the ensuing legislature.

History: En. Sec. 13, Ch. 129, L. 1969; R.C.M. 1947, 11-4413; amd. Sec. 11, Ch. 314, L. 1981.

Part 3
Consolidation and Transfer of Services

7-11-301. Purpose. (1) The purpose of this part is to provide procedures for the electors of local governments to consolidate or transfer the administrative and financial responsibility for services between or among municipalities and counties.

(2) Nothing in this part is to be construed as in any way affecting the authority of local governments to enter into interlocal agreements or contracts as provided by law.

History: En. Sec. 1, Ch. 314, L. 1981.

7-11-302. Consolidation and transfer of services. (1) A consolidation or transfer of services between or among municipalities may be proposed by a petition of the electors or on a recommendation of an interlocal cooperation commission as provided in 7-11-230.

(2) A petition or recommendation may propose to consolidate or transfer the administrative or financial responsibility or any administrative service, activity, or undertaking that any of the local governments included in the proposed consolidation or transfer are authorized by law to perform.

(3) Notwithstanding the requirements of 7-32-101, a petition or recommendation may propose to consolidate or transfer any law enforcement administrative service, activity, or undertaking between or among local governments.

History: En. Sec. 2, Ch. 314, L. 1981.

7-11-303. Petition for consolidation or transfer of services. (1) A petition or recommendation for the consolidation or transfer of the administrative and financial responsibility for services between or among local governments may be presented to the governing bodies of the local governments affected by the consolidation or transfer.

(2) A petition must be signed by at least 15% of the electors registered at the last general election of the local governments affected by the proposed consolidation or transfer.

(3) Whenever the consolidation or transfer of a service between a county and municipality is proposed by petition, the petition must be signed by at least 15% of the electors residing in each

municipality included in the service consolidation or transfer and 15% of the electors residing in the remainder of the county.

(4) Upon determination of the sufficiency of the petition or upon receipt of a recommendation of the interlocal cooperation commission, the governing body of each of the local governments affected by the proposed consolidation or transfer shall call an election on the transfer or consolidation as provided in 7-11-307.

History: En. Sec. 3, Ch. 314, L. 1981.

7-11-304. Service plan. (1) The petitioners or the interlocal cooperation commission shall prepare a service plan governing the service or activity proposed to be transferred or consolidated.

(2) The plan shall provide:

(a) the nature of service or function to be consolidated or transferred;

(b) the effective date of the proposed consolidation or transfer;

(c) the responsibility for administration of the service to be consolidated or transferred, including the succession of the performance of duties currently performed by an elected officer if the elective status of an office is affected;

(d) the manner in which affected employees currently engaged in the performance of the function will be transferred, reassigned, or otherwise treated;

(e) the manner in which real property, facilities, equipment, or other personal property required in the exercise of the function are to be transferred, sold, or otherwise disposed of;

(f) the method of financing, establishing, and maintaining a budget for the service; and

(g) other legal, financial, and administrative arrangements necessary to effect the transfer in an orderly and equitable manner.

(3) The service plan may include provisions for an administrator or joint board responsible for administering any joint or cooperative undertaking.

(4) The service plan shall be attached to the petition or to the interlocal cooperation commission's recommendation when it is submitted to the governing bodies affected by the service consolidation or transfer.

History: En. Sec. 4, Ch. 314, L. 1981.

7-11-305. Availability of petition or recommendation and service plan. (1) Sufficient copies of the petition or recommendation of the interlocal cooperation commission proposing a service consolidation or transfer and the service plan must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the proposal if an election is to be held. If the election is held, it must be held in conjunction with a regular or primary election.

(2) Each local government affected by the proposal may distribute copies of the service plan to its residents.

History: En. Sec. 5, Ch. 314, L. 1981; amd. Sec. 39, Ch. 387, L. 1995.

7-11-306. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition or recommendation and the service plan proposing the consolidation or transfer of a service or activity must be published at least twice in a newspaper of general circulation in each local government affected by the proposal. The publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed methods of service delivery, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be shared by the affected local governments.

History: En. Sec. 6, Ch. 314, L. 1981.

7-11-307. Election on service consolidation or transfer. (1) The governing bodies of each local government affected by a proposed service consolidation or transfer shall jointly call a special election on the question of service consolidation or transfer, to be held in conjunction with a regular or primary election. The county election administrator shall prepare and print notices of the special election.

(2) The cost of the election must be shared by the affected local governments in proportionate shares as agreed to by the governing bodies of the local governments.

History: En. Sec. 7, Ch. 314, L. 1981; amd. Sec. 17, Ch. 250, L. 1985; amd. Sec. 40, Ch. 387, L. 1995.

7-11-308. General ballot requirements. (1) The question of adopting a service consolidation or transfer shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

Shall the plan for (consolidation or transfer) of (insert name of service or function) services proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert the names of local government units) be adopted?

YES.

NO.

(2) If the question of adopting a service consolidation or transfer alters the elective status of any elected county official, it shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

For adoption of (consolidation or transfer) of (insert name of service or function) proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert names of local government units) in which the office of (insert name of county office) is (insert description of changes in elective status).

For existing service delivery arrangements.

(3) In any election involving the question of service consolidation or transfer, an affirmative vote of a simple majority of those voting on the question is required for adoption.

(4) If the electors disapprove the proposed service consolidation or transfer, each local government retains its existing service delivery method until changed or modified as provided by law.

(5) Except for nonsubstantive adjustments required to insure efficient and effective operations, a service consolidation or transfer effected by the procedures contained in this part may be amended or otherwise changed only in the same manner as required for its adoption.

History: En. Sec. 8, Ch. 314, L. 1981.

7-11-309. Effect of adoption of service consolidation or transfer. The adoption of a service consolidation or transfer does not affect the validity of any bond, debt, contract, collective bargaining agreement, obligation, or cause of action accrued or established by any affected local government prior to the consolidation or transfer.

History: En. Sec. 9, Ch. 314, L. 1981.

7-11-310. Judicial review. (1) Judicial review to determine the validity of the procedures used in adopting any service consolidation or transfer may be initiated by petition in district court of 10 or more registered electors of each local government affected by the consolidation or transfer brought within 60 days after the election adopting the service consolidation or transfer. If no petition is filed within that period, compliance with all the procedures required by 7-11-303 through 7-11-310 and the validity of the manner in which the service consolidation or transfer was approved is conclusively presumed.

(2) It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a service consolidation or transfer may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: En. Sec. 10, Ch. 314, L. 1981.

Parts 4 through 9 reserved

Part 10
Special Districts — Creation and Governance

Part Compiler's Comments

Effective Date: Section 44, Ch. 286, L. 2009, provided that this part is effective July 1, 2009.

7-11-1001. Purpose. The purpose of this part is to allow for the creation and governance of special districts.

History: En. Sec. 1, Ch. 286, L. 2009.

7-11-1002. Definitions. As used in this part, the following definitions apply:

(1) "Governing body" means the legislative authority of a local government.

(2) "Local government" means a city, town, county, or consolidated city-county government or any combination of these acting jointly.

(3) (a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited number of functions.

(b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

(c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

History: En. Sec. 2, Ch. 286, L. 2009.

7-11-1003. Authorization to create special districts. (1) Whenever the public convenience and necessity may require:

(a) the governing body may create a special district to serve the inhabitants of the special district; or

(b) petitioners may initiate the creation of a special district to serve inhabitants of the special district.

(2) (a) Subject to subsection (2)(b), a petition to institute the creation of a special district must be signed by 40% of registered voters or 40% of owners of real property within the boundary of the proposed special district and submitted to the clerk of the governing body.

(b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by 40% of registered voters or 40% of property taxpayers within the boundary of the proposed district.

(c) The form of the petition may be prescribed by the governing body.

(d) Subject to subsection (2)(c), the petition must:

(i) require the printed name of each signatory;

(ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and the address of that property;

(iii) describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district;

(iv) designate the method of financing any proposed improvements and program within the special district;

(v) include a general description of the areas to be included in the proposed special district; and

(vi) specify whether the proposed special district would be administered by the local governing body or an appointed or elected board.

(3) Within 30 days of receipt of a petition to create a special district, the clerk of the governing body shall:

(a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or

(b) reject the petition if it is insufficient under the provisions of subsection (2).

(4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

History: En. Sec. 3, Ch. 286, L. 2009.

7-11-1004 and 7-11-1005 reserved.

7-11-1006. Determining special district boundaries. (1) The boundaries of the proposed special district must be mapped and clearly described before the district may be approved.

(2) The governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district.

(3) The boundaries must follow property ownership, precinct, school district, municipal, and county lines as far as practical.

History: En. Sec. 4, Ch. 286, L. 2009.

7-11-1007. Public hearing — resolution of intention to create special district. (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body or upon a petition that contains the required number of signatures.

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the estimated cost and method of financing the proposed program or improvements;

(f) any requirements specifically applicable to the type of special district; and

(g) whether the proposed special district would be administered by the governing body or an appointed or elected board.

(3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with 2-6-109.

(c) A copy of the notice described in subsection (3)(a) must be mailed to the owners of the property included on the list referred to in subsection (3)(b).

History: En. Sec. 5, Ch. 286, L. 2009.

7-11-1008. Right to protest — procedure — hearing. (1) An owner of property that is liable to be assessed for the program or improvements in the proposed special district has 30 days from the date of the first publication of the notice of passage of the resolution of intention to make a written protest against the proposed program or improvements.

(2) The protest must be in writing, identify the property in the district owned by the protestor, be signed by all of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property or the contract buyer on file with the county clerk and recorder.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.

(4) An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027.

(5) (a) At the hearing provided for in 7-11-1007, the governing body shall consider all protests.

(b) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.

(c) If the protest is made by the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months.

(d) In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a governmental entity must be considered the same as any other property in the district.

(e) The decision of the governing body is final and conclusive.

(f) The governing body may adjourn the hearing from time to time.

History: En. Sec. 6, Ch. 286, L. 2009.

7-11-1009 and 7-11-1010 reserved.

7-11-1011. Referendum — election. (1) The governing body may order a referendum on the creation of the proposed special district to be submitted to the registered voters who reside within the proposed special district and the individuals qualified to vote pursuant to subsections (5) and (6).

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024;

(b) the type of activities proposed to be financed, including a general description of the program or improvements;

(c) a general description of the areas included in the proposed special district; and

(d) whether the proposed special district would be administered by the governing body or an appointed or elected board.

(3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"

(5) Except as provided in subsection (6), an individual is entitled to vote on the proposition if the individual:

(a) meets all qualifications required of electors under the general election laws of the state; and

(b) is a resident of or owner of taxable real property in the area subject to the proposed special district.

(6) An individual who is the owner of real property described in subsection (5)(b) need not possess the qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the referendum in which the individual intends to vote.

(7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection (3).

(8) If the referendum is approved, the election administrator of each county shall:

(a) immediately file with the secretary of state a certificate stating that the proposition was adopted and record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and

(b) notify any municipalities lying within the boundaries of the special district.

History: En. Sec. 7, Ch. 286, L. 2009.

7-11-1012. Certificate of establishment. (1) Upon receipt of the certificate referred to in 7-11-1011(8), the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated.

(2) When the certificate is issued by the secretary of state, the district named in the certificate is established with all the rights, privileges, and powers set forth in 7-11-1021.

History: **En. Sec. 8, Ch. 286, L. 2009.**

7-11-1013. Order creating district — power to implement program. (1) The governing body may create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with 7-11-1008 or if the eligible registered voters have approved a referendum as provided in 7-11-1011.

(2) To create a special district, the governing body shall issue an order or pass an ordinance or resolution in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum. This must be done within 30 days of the end of the protest period or approval of the referendum.

(3) If the governing body creates the special district of its own accord and without a referendum being held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall issue a certificate of establishment in accordance with 7-11-1012.

History: **En. Sec. 9, Ch. 286, L. 2009.**

7-11-1014. Additional reporting procedures — coordination of information collection, transfer, and accessibility. (1) Within 60 days after the creation of a special district or by January 1 of the effective tax year, whichever occurs first, the governing body shall provide to the department of revenue a:

(a) legal description of the special district;

(b) map of its boundaries;

(c) list of the property taxpayers or owners of real property within the special district's boundaries; and

(d) copy of the resolution establishing the special district, including any adopted method of assessment.

(2) The department of revenue shall review the information provided in accordance with subsection (1) and work with the governing body to identify and correct any discrepancies before the information is recorded by the department.

(3) If the governing body intends to submit any digital information to the department of revenue for the purposes of subsection (4)(b), the governing body shall notify the department of revenue as to the expected date of submission and submit the digital information in a manner prescribed by the department of revenue in consultation with the department of administration.

(4) The department of administration, in coordination with the department of revenue, governing bodies, and other appropriate entities, may develop standards, best practices, and procedures for:

(a) collecting and transferring between agencies any digital information submitted by a governing body for purposes of subsection (4)(b); and

(b) creating digital information to map special districts for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the department's base map service center's website and discovered through the Montana geographical information system portal at the Montana state library.

History: **En. Sec. 10, Ch. 286, L. 2009.**

7-11-1015. Limitations on lawsuits. (1) A finding of the governing body in favor of the genuineness and sufficiency of the petition or election is final and conclusive against all persons except the state of Montana upon suit brought by the attorney general.

(2) A lawsuit filed by the attorney general must be filed by the earlier of:

(a) 1 year after the order, ordinance, or resolution creating the special district is approved by the governing body; or

(b) the issuance of bonds to implement the program or improvements approved for the special district.

History: **En. Sec. 11, Ch. 286, L. 2009.**

7-11-1016 through 7-11-1020 reserved.

7-11-1021. Governance — powers and duties. (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) (a) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated.

(b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.

(c) The governing body has ultimate authority under this subsection (2).

(3) The entity chosen to administer the special district, as provided in subsection (1), may:

(a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;

(b) administer the budget of the special district;

(c) employ personnel;

(d) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;

(e) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;

(f) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;

(g) construct and maintain facilities and buildings necessary to accomplish the purposes of the special district;

(h) provide grants to private, nonprofit entities as part of implementing an effective program;

(i) adopt a seal and alter it at the entity's pleasure;

(j) administer local ordinances as appropriate;

(k) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and

(l) borrow money by the issuance of:

(i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

(ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

(4) The entity chosen to administer the special district shall submit annual budget and work plans to the governing body for review and approval.

(5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

History: En. Sec. 12, Ch. 286, L. 2009.

7-11-1022. Multiple jurisdictions. (1) A special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction.

(2) A special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions. The local governments acting together may agree to alter an existing contract, district, or interlocal agreement as necessary.

(3) The local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to their interlocal agreement.

History: En. Sec. 13, Ch. 286, L. 2009.

7-11-1023. Alteration of special districts. (1) The governing body may change the boundaries of any special district by resolution.

(2) The boundaries may be altered by petition after complying with the requirements for petitions as provided in 7-11-1003.

(3) Alteration of boundaries is also subject to procedures for public notice, protest, referendum, certification, reporting, and establishment of assessment as provided in 7-11-1006 through 7-11-1008, 7-11-1011 through 7-11-1015, and 7-11-1024.

(4) Changes made to the boundaries may not:

(a) occur more than once each year unless the governing body makes a special finding that an alteration is necessary;

(b) delete any portion of the area if the deletion will create an island of included or excluded lands;

(c) delete any portion of the area that is negatively contributing or may reasonably be expected to negatively contribute to environmental impacts that fall within the scope of the special district's program; and

(d) affect indebtedness existing at the time of the change.

History: En. Sec. 14, Ch. 286, L. 2009.

7-11-1024. Financing for special district. (1) The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to 7-11-1021.

(2) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(3) The governing body shall assess the percentage of the cost of the program or improvements:

(a) against the entire district as follows:

(i) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;

(ii) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;

(iii) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;

(iv) each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained;

(v) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or

(vi) any combination of the assessment options provided in subsections (3)(a)(i) through (3)(a)(v) may be used for the special district as a whole; or

(b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration:

(i) the nature of the property or entity assessed;

(ii) a calculated basis for the program or service, including volume or weight;

(iii) the cost, incentives, or penalties applicable to the program or service practices; or

(iv) any combination of these factors.

(4) If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

History: **En. Sec. 15, Ch. 286, L. 2009.**

7-11-1025. Notice of resolution for assessment — assessment. (1) The governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.

(2) The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements.

(3) The resolution levying the assessment to defray the cost of the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.

(4) The resolution must be kept on file in the office of the clerk of the governing body.

(5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

(6) The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40.

(7) At the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment.

(8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue by the third Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.

History: **En. Sec. 16, Ch. 286, L. 2009.**

7-11-1026. Collection of special district assessments. (1) When a resolution of assessment has been certified by the clerk of the local government, the county treasurer, the city treasurer, or the town clerk, as provided in 7-12-4182, shall collect the assessment in the same manner and at the same time as property taxes for general purposes are collected.

(2) All money received by the special district, including interest and earnings accrued, must be deposited in an account held only for the special district by the office of the county treasurer, city treasurer, or town clerk.

History: **En. Sec. 17, Ch. 286, L. 2009.**

7-11-1027. Payment of assessment under protest — action to recover. (1) When an assessment made under this part is considered unlawful by the party whose property is charged or from whom the payment is demanded, the person may pay the assessment or any part of the assessment considered to be unlawful under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment.

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment.

(4) If the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(5) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.

History: **En. Sec. 18, Ch. 286, L. 2009.**

7-11-1028. Assessments as liens. (1) An assessment made and levied to defray the cost and expenses of the program or improvements, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon the property on which the assessment is made and levied from the date of the passage of the resolution levying the assessment. This lien may be extinguished only by payment of the assessment, with all penalties, costs, and interest, or by sale of the property as provided in subsection (2).

(2) When the payment of an installment of an assessment becomes delinquent, all payments of subsequent installments of the assessment may, at the option of the governing body and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold in the same manner as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: **En. Sec. 19, Ch. 286, L. 2009.**

7-11-1029. Dissolution of special district. (1) A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity.

(2) The governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district.

(3) After the passage of the resolution provided for in subsection (2), the clerk of the local government that established the special district shall publish a notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district.

(4) The notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution will be passed unless the clerk of the local government receives written protest in advance from:

(a) 40% of registered voters or 40% of the owners of real property in the district; or

(b) 40% of registered voters or 40% of the property taxpayers in the district if the district program or improvements have been financed through a mill levy.

(5) If the special district is dissolved, the clerk of the local government shall immediately send written notice to:

(a) the secretary of state; and

(b) the department of revenue, providing the same information required in 7-11-1014 when a district is created. The department of revenue and the department of administration shall respond to the dissolution in the same manner as they respond to the creation of a district, as described in 7-11-1014.

(6) The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.

(7) Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:

(a) deposited in the general fund of the local government;

(b) in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or

(c) transferred to a new special district that has been created to provide substantially the same service as provided by the dissolved special district.

(8) If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor.

History: En. Sec. 20, Ch. 286, L. 2009.

Part 11
Multijurisdictional Service Districts

7-11-1101. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 1, Ch. 425, L. 1985.

7-11-1102. Services that may be provided. (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 11, part 10;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs;

(f) ambulance service;

(g) dispatch service;

(h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;

(i) health services and health department functions; and

(j) maintenance or provision of any public infrastructure facility, project, or service.

History: En. Sec. 2, Ch. 425, L. 1985; amd. Sec. 8, Ch. 425, L. 1985; amd. Sec. 1, Ch. 193, L. 1991; amd. Sec. 1, Ch. 116, L. 1993; amd. Sec. 1, Ch. 114, L. 1997; amd. Sec. 8, Ch. 459, L. 1997; amd. Sec. 3, Ch. 86, L. 1999; amd. Sec. 26, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (2)(a) at end substituted "Title 7, chapter 11, part 10" for "Title 7, chapter 16, part 24". Amendment effective July 1, 2009.

7-11-1103 and 7-11-1104 reserved.

7-11-1105. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 5, Ch. 425, L. 1985.

7-11-1106. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 425, L. 1985; amd. Sec. 30, Ch. 584, L. 1999.

7-11-1107. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 425, L. 1985.

7-11-1108 through 7-11-1110 reserved.

7-11-1111. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 3, Ch. 425, L. 1985.

7-11-1112. Financing. (1) Subject to 15-10-420, local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in accordance with 7-11-1007 and to appropriate funds derived from other than general tax revenue for the operation of the district. Subject to 15-10-420, property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district may, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on the property.

History: En. Sec. 4, Ch. 425, L. 1985; amd. Sec. 31, Ch. 584, L. 1999; amd. Sec. 27, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (1) in first sentence substituted reference to 7-11-1007 for reference to 7-11-1106; in (2) near middle substituted "may" for "must"; and made minor changes in style. Amendment effective July 1, 2009.

CHAPTER 12
IMPROVEMENT DISTRICTS

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Part 11 — Business Improvement Districts

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7-12-4205. Disposition of bond or warrant proceeds.
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7-12-4226. Investment of surplus reserves.
7-12-4227. Utilization of excess money in revolving fund.
7-12-4228. Disposition of tax certificates and tax lien sale property.
7-12-4229. Disposal of funds deposited in revolving fund.
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7-12-4244. Issuance of bonds based upon supplemental revolving fund — election.
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Part 43 — Special Provisions for Special Improvement Lighting Districts

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Part 44 — Special Provisions for Street Maintenance Districts

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7-12-4402. Creation of maintenance districts.
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Part 45 — Special Provisions for Street Parking Districts

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7-12-4502. Notice of intention to abandon district.

7-12-4503. Protest to abandonment of district.
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Part 46 — Fire Hydrant Maintenance Districts

7-12-4601. Authorization to create fire hydrant maintenance districts.
7-12-4602. Resolution of intention to create a fire hydrant maintenance district.
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7-12-4604. Protest against creation of fire hydrant maintenance district.
7-12-4605. Consideration of protest.
7-12-4606. Resolution to create fire hydrant maintenance district.
7-12-4607 through 7-12-4610 reserved.
7-12-4611. Resolution for assessment — assessment options.
7-12-4612. Collection method — utility options — resolution of assessment.
7-12-4613 through 7-12-4620 reserved.
7-12-4621. Water user entities exempt from special assessments.

Parts 1 through 10 reserved

Part 11
Business Improvement Districts

7-12-1101. Short title. This part may be cited as the "Business Improvement District Act".
History: En. Sec. 1, Ch. 656, L. 1985.

7-12-1102. Purpose. The purpose of this part is to provide for the creation of business improvement districts having one or more of the purposes and powers provided in this part that will:

(1) serve a public use;

(2) promote the health, safety, prosperity, security, and general welfare of the inhabitants of the district and of the people of this state;

(3) be of special benefit to the property within the boundaries of any district created pursuant to the provisions of this part; or

(4) aid in tourism, promotion, and marketing within the district.
History: En. Sec. 2, Ch. 656, L. 1985; amd. Sec. 1, Ch. 253, L. 2007.

7-12-1103. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the mayor in the case of a municipality, the board of county commissioners in the case of a county, or the chief executive of a consolidated city-county government.

(2) "Board" means the board of trustees created in 7-12-1121.

(3) "Business" means all types of business, including professions.

(4) "District" means a business improvement district created under this part.

(5) "Governing body" means the legislative body of a local government.

(6) "Local government" means a municipality, a county, or a consolidated city-county government.

(7) "Owner" means a person in whom appears the legal title to real property by deed recorded in the county records or a person in possession of real property under claim of ownership for the person or as the personal representative, agent, or guardian of the owner.
History: En. Sec. 3, Ch. 656, L. 1985; amd. Sec. 17, Ch. 370, L. 1987; amd. Sec. 527, Ch. 61, L. 2007.

7-12-1104 through 7-12-1110 reserved.

7-12-1111. Establishment or expansion of district. (1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district or in the expansion of a district, a governing body shall establish a district or expand a district as provided in this part.

(2) The boundaries of a district must comply with applicable zoning regulations.

(3) The district may not include areas that are zoned primarily as residential areas.

(4) (a) A district may be composed of noncontiguous areas if the properties in a district have a common purpose of providing overnight stays at lodging facilities.

(b) The boundaries of a district with noncontiguous areas must encompass all properties in the district with the same identified purpose.

History: **En. Sec. 4, Ch. 656, L. 1985; amd. Sec. 1, Ch. 79, L. 1991; amd. Sec. 2, Ch. 253, L. 2007.**

Cross-References

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

7-12-1112. Resolution of intention to create or expand district — notice. (1) Before creating or expanding a district, the governing body shall pass a resolution of intention to do so, designating the boundaries of the district.

(2) Notice of passage of the resolution must be published as provided in 7-1-2121. A copy of the notice must be mailed to every owner of real property within the proposed district or within the proposed area of expansion listed on the last-completed assessment roll for state, county, and school district taxes, at the owner's last-known address, on the same day the notice is first published or posted.

(3) The notice must describe the general purpose of the district or the general reason for the expansion and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the creation of the district or the expansion of the existing district. The notice must refer to the resolution on file with the governing body or clerk, if any, for the description of the boundaries.

(4) The resolution to expand a district deals only with the question of the expanded area, and the existing district does not have to be reestablished.

History: **En. Sec. 5, Ch. 656, L. 1985; amd. Sec. 2, Ch. 79, L. 1991; amd. Sec. 20, Ch. 354, L. 2001.**

Cross-References

Office of City Treasurer, 7-4-4701.

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

Office of County Treasurer, Title 7, ch. 6, part 21.

7-12-1113. Protest against proposed district. (1) Any owner of property liable to be assessed may make written protest against the extent or creation of the district to be assessed, or both.

(2) The protest must be in writing and must be delivered to the governing body or its clerk, if any, not later than 5 p.m. of the last day within 15 days after the date of the first publication of the notice of the resolution of intention. The date and hour of receipt of the protest shall be endorsed thereon.

History: **En. Sec. 6, Ch. 656, L. 1985.**

7-12-1114. Hearing on protest — sufficient protest to bar proceedings. (1) At a regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall proceed to hear and pass upon all protests. Its decision shall be final and conclusive.

(2) The governing body may adjourn the hearing from time to time. A protestant shall have the right to withdraw a protest at any time before final action thereon by the council or commission.

(3) No further action shall be taken upon the proposed district or proposed expansion of an existing district for 1 year if a written protest against passage of the proposed ordinance is filed by:

(a) owners of property within the proposed district or area of a proposed expansion having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district or within the area of a proposed expansion;

(b) not less than 50% of the owners of property within the district or area of a proposed expansion; or

(c) owners of property within the proposed district or area of a proposed expansion having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district or within the area of a proposed expansion.

History: **En. Sec. 7, Ch. 656, L. 1985; amd. Sec. 3, Ch. 79, L. 1991.**

7-12-1115. Resolution creating or expanding district. When no protests have been delivered to the governing body within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by the governing body to be insufficient or has been overruled, or when a protest against the extent of the proposed district or proposed expansion of a district has been heard and denied, the governing body has jurisdiction to order the creation or expansion of the district and shall pass a resolution creating or expanding the district in accordance with the resolution of intention.

History: **En. Sec. 8, Ch. 656, L. 1985; amd. Sec. 4, Ch. 79, L. 1991.**

7-12-1116 through 7-12-1120 reserved.

7-12-1121. Board of trustees — appointment — number — term of office. (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property within the district or their assignees to compose the board of trustees of the district. The director for a business improvement district created for the purpose of 7-12-1102(4) must be the executive director of a nonprofit convention and visitors bureau, as defined in 15-65-101, if a nonprofit convention and visitors bureau is operating within the governing body's jurisdiction.

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of the member's appointed term.

(3) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(4) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the unexpired term. A member holds office until a successor has been appointed and qualified.

History: **En. Secs. 9, 10, Ch. 656, L. 1985; amd. Sec. 528, Ch. 61, L. 2007; amd. Sec. 3, Ch. 253, L. 2007.**

7-12-1122. Organization of board of trustees — no compensation. (1) The appointing authority shall designate which member of the board is to be the first presiding officer. When the office of presiding officer of the board becomes vacant, the board shall elect a presiding officer from among its members. The term of office as presiding officer of the board, unless otherwise prescribed by the governing body, must be for 1 calendar year or for that portion of a year remaining after each presiding officer is designated or elected.

(2) Members may not receive compensation.

History: **En. Sec. 12, Ch. 656, L. 1985; amd. Sec. 529, Ch. 61, L. 2007.**

7-12-1123. Removal of board member. A member of a board of trustees may be removed by the appointing authority with the consent of the governing body.

History: **En. Sec. 11, Ch. 656, L. 1985.**

7-12-1124 through 7-12-1130 reserved.

7-12-1131. Powers of board in administering district. The board in administering a district has all powers necessary to carry out the functions of the district contained in the ordinance creating it, including the power to:

(1) sue and be sued, enter into contracts, and hire and terminate personnel needed for its purposes;

(2) provide special police, maintenance, or cleaning personnel for the protection and enjoyment of the general public using the business district;

(3) landscape and beautify public areas and to maintain those areas;

(4) contract with the governing body to maintain, operate, or repair public parking facilities;

(5) contract with the governing body to maintain streets, alleys, malls, bridges, ramps, tunnels, landscaping, and other public facilities as mutually agreed upon;

(6) promote private investment and business expansion in the district;

(7) provide for the management and administration of the affairs of the district;

(8) promote business activity by advertising, decorating, marketing, and promoting and managing events and other actions designed for the general promotion of business activities in the district; and

(9) perform such other functions as are necessary to carry out the purposes of this part and to further the objectives of the district.

History: **En. Sec. 13, Ch. 656, L. 1985.**

7-12-1132. Annual budget and work plan — approval — procedure — tax. (1) At a time determined by the governing body, the board shall submit to the governing body for approval a work plan and budget for the ensuing fiscal year.

(2) A board created for the purpose of 7-12-1102(4) in a municipality or county where a nonprofit convention and visitors bureau, as defined in 15-65-101, is operating shall consult with the nonprofit convention and visitors bureau in developing a work plan and budget for the ensuing fiscal year.

(3) Following public notice that a work plan and budget have been submitted and that the governing body will levy an assessment to defray the cost of the work plan and budget, the governing body shall hold a public hearing on objections to the work plan and budget. After the hearing, the governing body may modify the work plan and budget as it considers necessary and appropriate.

(4) After approval of the work plan and budget and to defray the cost of the work plan and budget for the next fiscal year, the governing body shall by resolution levy an assessment upon all of the property in the district using as a basis one of the methods prescribed in 7-12-1133.

(5) A copy of the resolution must be delivered to the treasurer of the local government to be placed on the tax roll and collected in the same manner as other taxes.

History: **En. Sec. 14, Ch. 656, L. 1985; amd. Sec. 4, Ch. 253, L. 2007.**

7-12-1133. Assessment of costs — area, lot, taxable valuation, square footage, and flat-fee options — provisions for property classifications. (1) At the same time that the board submits the annual budget and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district that will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method that best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within the district may be assessed for that part of the whole cost that its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) if the governing body determines that benefits derived by each lot or parcel are proportional, the governing body may use a standard criteria, such as individual occupancy or daily use, and make the assessment on a flat-fee basis based on the criteria;

(d) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the whole cost of the district that its taxable valuation bears to the total taxable valuation of the property of the district;

(e) each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district;

(f) if the governing body determines that benefits derived by each lot or parcel are disproportional, the governing body may use classification criteria, such as location within the district, economic impact, or any other measurable criteria, in conjunction with methods of assessing fees outlined in this subsection (2). Each classification must have its own rate. There may not be more than six classifications upon which a charge is imposed.

(g) by using any combination of the assessment options provided in subsections (2)(a) through (2)(f).

(3) If a district is expanded, the land within the expanded area or property with a similar purpose in the district must be assessed as provided for in subsection (2) for the duration of the district.

History: En. Sec. 15, Ch. 656, L. 1985; amd. Sec. 1, Ch. 450, L. 1989; amd. Sec. 5, Ch. 79, L. 1991; amd. Sec. 5, Ch. 253, L. 2007.

7-12-1134 through 7-12-1140 reserved.

7-12-1141. Duration of district. The period of duration of a business improvement district is for the period specified in the resolution of the governing body creating the district but shall not be for a period longer than 10 years unless the duration of the district is extended in compliance with the provisions of this part for the creation of a district.

History: En. Sec. 16, Ch. 656, L. 1985.

7-12-1142. Governing body not to decrease public services. The governing body may not decrease the level of public services in the district existing prior to the creation of the district unless the services at the same time are decreased throughout the jurisdictional area of the governing body, nor may it transfer the financial burden of providing those services to the district. The governing body may not discriminate in the provision of publicly funded services between areas included in such district and areas not so included.

History: En. Sec. 17, Ch. 656, L. 1985.

7-12-1143. Liability insurance required. The governing body may not approve the annual budget or the work plan submitted to it by the board unless the annual budget and the work plan provide for liability insurance coverage insuring the district, the board, and the local government against legal liability for personal injury and property damage in an amount determined sufficient for that purpose by the governing body.

History: En. Sec. 18, Ch. 656, L. 1985.

Cross-References

Liability exposure and insurance coverage of governmental entities, Title 2, ch. 9.

7-12-1144. Obligations of district not obligations of local government. An obligation or debt of any nature of a district is not an obligation or debt of the local government that established the district, and in no event is a debt or obligation of a district payable out of any funds or properties of the local government. The debts and obligations of a district are payable solely from the funds and properties of the district.

History: En. Sec. 19, Ch. 656, L. 1985.

7-12-1145 through 7-12-1150 reserved.

7-12-1151. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

Parts 12 through 20 reserved

Part 21
Rural Improvement Districts

7-12-2101. Definitions. (1) The word "blocks" means blocks, whether regular or irregular, that are bounded by main streets or partially by a boundary line of the city.

(2) The term "board of county commissioners" includes any body or board that under the law is the legislative department of the government of the county.

(3) The word "city" and the word "municipality", as used in this part, include all corporations organized for municipal purposes.

(4) The terms "clerk" and "county clerk", as used in this part, include any person or officer who is clerk of the board of county commissioners.

(5) The term "county treasurer", as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

(6) The term "engineer", as used in this part, means the person, firm, or corporation designated by the board of county commissioners as the engineer for the improvement.

(7) The term "incidental expenses", as used in this part, includes:

(a) the compensation of the engineer for work done;

(b) the cost of printing and advertising, as provided in this part;

(c) interest on warrants of the county issued to pay costs of improvements, as provided in this part;

(d) costs of issuance of the bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, attorney fees and financial consultants' fees, a premium for bond insurance, any price paid by the original purchaser of the bonds that is less than the face amount of the bonds, and interest to accrue on bonds or warrants of the special improvement district before assessments levied by the district are collected in amounts and at times sufficient to pay the interest; and

(e) a reasonable administrative fee payable to the county for the creation and administration of the district by the county, its officers, and its employees.

(8) The term "main street" means an actually opened street or streets as bound a block.

(9) The words "paved" or "repaved", as used in this part, mean and include pavement of stone, whether paving blocks or macadam; of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, that the board of county commissioners by rule or resolution shall adopt.

(10) The term "quarter block", as used in this part in reference to irregular blocks, includes all lots or portions of lots having frontage on either intersecting street halfway from the intersection to the next main street or, when a main street does not intervene, all the way to the boundary line of the city.

(11) The word "street", as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places that have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) The term "street intersection", as used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets that lies between lines drawn from corner to corner of all lot lines immediately cornering at the juncture.

(13) The words "work", "improved", and "improvements", as used in this part, include all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of any portion of the work.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part); amd. Sec. 1, Ch. 665, L. 1985; amd. Sec. 530, Ch. 61, L. 2007.

Cross-References

Special improvement districts, Title 7, ch. 12, part 41.

7-12-2102. Authorization to create rural improvement districts — property owners may petition for creation. (1) Whenever the public interest or convenience may require, the board of county commissioners may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) The board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Properties within the proposed district boundaries inside the city may not be included in the rural special improvement district if, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels in the city representing not less than 40% of the total projected assessments against properties in the city protest the creation of the rural special improvement district. The property

inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part); amd. Sec. 1, Ch. 342, L. 1981; amd. Sec. 2, Ch. 665, L. 1985; amd. Sec. 1, Ch. 529, L. 2005; amd. Sec. 1, Ch. 93, L. 2007.

Cross-References

Board of County Commissioners defined, 7-12-2101.
City and municipality defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — authorization, 7-12-4102.

7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating a special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention.

(2) The resolution must:

(a) designate the number of the district;

(b) describe the boundaries of the district;

(c) state in the resolution the general character of the improvements that are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost of the work; and

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district.

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions of streets and rights-of-way, and it may exempt any of the work already done upon a street to the official grade.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part); amd. Sec. 3, Ch. 665, L. 1985; (3)En. Sec. 6, Ch. 665, L. 1985; amd. Sec. 1, Ch. 488, L. 2005; amd. Sec. 1, Ch. 342, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 342 deleted former (2)(f) that read: "(f) if applicable, provide any additional information required to be included in the notice under 7-12-2105(3)(a)"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Engineer defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — resolution of intention, 7-12-4104.

7-12-2104. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R.C.M. 1921; re-en. Sec. 4579, R.C.M. 1935; R.C.M. 1947, 16-1606.

Cross-References

Work, improved, or improvements defined, 7-12-2101.
Special improvement district — sufficiency of description, 7-12-4105.

7-12-2105. Notice of resolution of intention to create district — hearing — exception. (1) Upon passage of a resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2).

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part); amd. Sec. 16, Ch. 349, L. 1985; amd. Sec. 4, Ch. 665, L. 1985; amd. Sec. 1, Ch. 229, L. 1995; amd. Sec. 2, Ch. 488, L. 2005; amd. Sec. 2, Ch. 529, L. 2005; amd. Sec. 2, Ch. 342, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 342 in (3)(a) deleted former second sentence that read: "If one or more of the improvements proposed to be made or acquired by purchase are related to each other or are part of a larger project, the notice must describe the entire scope of the related or larger project, including the estimated costs of all related improvements, the method or methods by which these costs will be assessed, the impacts on property rights, and other actual or potential costs reasonably related to the proposed improvement"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — notice, 7-12-4106.

7-12-2106. Repealed. Sec. 70, Ch. 354, L. 2001.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(4); amd. Sec. 1, Ch. 251, L. 1979.

7-12-2107. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 28, Ch. 147, L. 1921; re-en. Sec. 4601, R.C.M. 1921; re-en. Sec. 4601, R.C.M. 1935; R.C.M. 1947, 16-1628.

Cross-References

Clerk and County Clerk defined, 7-12-2101.
Special improvement district — publication of notice, 7-12-4108.

7-12-2108. Extension of proposed district. Whenever a contemplated work or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit or whenever, according to the estimates furnished by the county surveyor or the engineer, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed (if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment roll whereon it was assessed for taxes), the board may make the expense of such work chargeable upon the lots and lands fronting upon such proposed improvement and upon other lots and lands not fronting on the improvement and which the board shall declare, in its resolution of intention, to be the property benefited by said work or improvement and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R.C.M. 1921; re-en. Sec. 4576, R.C.M. 1935; R.C.M. 1947, 16-1603; amd. Sec. 5, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Engineer defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — extension of proposed district, 7-12-4109.

7-12-2109. Right to protest creation or extension of district — exception. (1) (a) Except as provided in subsections (1)(b) and (2), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the creation or extension of the district to be assessed, or both. The protest must be in writing, identify the property in the district owned by the protestor, and except as provided in 7-12-2141, be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

(2) The provisions of subsection (1)(a) do not apply if a resolution of intention to create the district is a result of a petition submitted as provided in 7-12-2102(2).

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part); amd. Sec. 7, Ch. 665, L. 1985; amd. Sec. 1, Ch. 198, L. 2003; amd. Sec. 6, Ch. 277, L. 2003; amd. Sec. 1, Ch. 401, L. 2005; amd. Sec. 3, Ch. 488, L. 2005; amd. Sec. 3, Ch. 529, L. 2005; amd. Sec. 3, Ch. 342, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 342 in (1)(a) at end of second sentence after "protestor" inserted "and except as provided in 7-12-2141, be signed by all owners of the property"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — protest, 7-12-4110.

7-12-2110. Repealed. Sec. 23, Ch. 277, L. 2003.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(1).

7-12-2111. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. The board may adjourn said hearing from time to time.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — hearing, 7-12-4112.

7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), further proceedings may not be taken for a period of 6 months from the date when a protest was received by the county clerk if the board of county commissioners finds that the protest is made by the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements as determined by the method or methods of assessment described in the resolution of intention.

(2) If the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board if:

(a) the improvements are ordered by the department of environmental quality or the federal environmental protection agency; or

(b) the governing body makes written findings after a public hearing and public comment, based on evidence in the record, that the proposed improvements protect public health or the environment, mitigate harm to the public health or environment, and are achievable under current technology.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part); amd. Sec. 8, Ch. 665, L. 1985; amd. Sec. 4, Ch. 488, L. 2005; amd. Sec. 4, Ch. 342, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 342 in (1) at end after "made by" inserted "the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements as determined by the method or methods of assessment described in the resolution of intention"; deleted former (1)(a) through (1)(c) that read: "(a) the owners of property within the proposed district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district;

(b) the owners of property within the proposed district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of the property within the district; or

(c) not less than 50% of the owners of property within the district"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — sufficient protest, 7-12-4113.

7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention that is introduced and passed by the board.

(2) The board has jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when sufficient protests have not been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest has been found by the board to be insufficient or has been overruled;

(c) when a protest against extending the proposed district has been heard and denied; or

(d) when a resolution creating the district is passed upon receipt of a petition as provided in 7-12-2102(2).

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R.C.M. 1921; re-en. Sec. 4578, R.C.M. 1935; R.C.M. 1947, 16-1605; amd. Sec. 11, Ch. 451, L. 2005; amd. Sec. 4, Ch. 529, L. 2005.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — resolution creating district, 7-12-4114.

7-12-2114. Area includable within district. A rural improvement district, as authorized by 7-12-2102, may include a part or all of any county or may include areas in more than one county.

History: En. Sec. 1, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.1.

7-12-2115. Adjournment of hearing. Whenever in proceedings hereunder a time and place for hearing by the board of county commissioners is fixed and from any cause, the hearing is not then and there held or regularly adjourned to a fixed time and place, the power and jurisdiction of the board in the premises shall not be thereby divested or lost, but the board may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the board shall have power to act as in the first instance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R.C.M. 1921; re-en. Sec. 4600, R.C.M. 1935; R.C.M. 1947, 16-1627.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district — adjournment of hearings, 7-12-4118.

7-12-2116. County surveyor as improvement district engineer. The county surveyor may be the engineer, as defined in 7-12-2101(6), for a rural improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

Cross-References

Engineer defined, 7-12-2101.

Special improvement district — appointment of city engineer, 7-12-4119.

7-12-2117. Record of expenses to be kept by engineer. The engineer selected as provided in this part shall keep an account in the engineer's office of all costs and expenses incurred in connection with each special improvement district and shall certify the costs and expenses to the county clerk.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part); amd. Sec. 531, Ch. 61, L. 2007.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

Engineer defined, 7-12-2101.

Special improvement district — record of expenses, 7-12-4121.

7-12-2118. Role of county clerk. It shall be the duty of the county clerk to prepare all necessary schedules and resolutions levying the taxes and assessments in such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

Cross-References

Clerk and County Clerk defined, 7-12-2101.

Special improvement district — role of City Clerk, 7-12-4122.

7-12-2119. Manner of making demands for incidental expenses. All demands for incidental expenses in 7-12-2101(7), except for the administrative fee of the county and interest payable on warrants or bonds of the district, shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part); amd. Sec. 9, Ch. 665, L. 1985.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

Incidental expenses defined, 7-12-2101.

Special improvement district — incidental expenses, 7-12-4123.

7-12-2120. Maintenance of improvements. (1) Whenever sanitary or storm sewers, lights or light systems, waterworks plants, water systems, sidewalks, or any other special improvements petitioned for or created by the state or federal government have been made, built, constructed, erected, or accomplished as provided in this part, the board of county commissioners under whose jurisdiction the district was created or supervised or directed shall adequately and suitably maintain and preserve the improvements and keep those improvements in proper repair and operation, by contract or otherwise.

(2) The whole cost of maintaining, preserving, and repairing improvements in any improvement district may, in the discretion of the board, be paid by assessing the entire district in the method provided for by 7-12-2108.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(1); amd. Sec. 8, Ch. 277, L. 2003.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district — maintenance of improvements, 7-12-4136.

7-12-2121. Administration of multicounty district. (1) If a rural improvement district includes areas in more than one county, the board of county commissioners of each county in which any portion of the district is situated shall, upon creation of the district and at a joint session, appoint an initial board of three trustees to administer the affairs of the district.

(2) At the end of the term of a trustee, the board of county commissioners of the county represented by the trustee shall appoint a new trustee. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners of the county represented by the trustee to fill the vacancy.

(3) At least one trustee shall be appointed from each county within the district.

History: **En. Secs. 2, 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.2, 16-1605.3(part); amd. Sec. 2, Ch. 251, L. 1979.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2122. Term of office of multicounty district trustee. (1) The trustees appointed upon the creation of a district shall serve staggered terms of 1, 2, and 3 years. After the initial appointments, each trustee serves a term of 3 years.

(2) A trustee holds office for the term of appointment or until a successor is appointed and qualified.

History: **En. Sec. 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.3(part); amd. Sec. 3, Ch. 251, L. 1979; amd. Sec. 532, Ch. 61, L. 2007.**

7-12-2123. Powers of multicounty district board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with respect to such district as the board of county commissioners has with respect to a district including the area of only one county.

History: **En. Sec. 4, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.4.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2124 and 7-12-2125 reserved.

7-12-2126. Transfer of management and control of district to city or town. (1) When a special improvement district has been created in accordance with the provisions of this part in any county of the state and the property contained therein subsequently becomes a part of the boundaries of an incorporated city or town, the board of county commissioners or the multicounty district trustees, as the case may be, may transfer the operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon.

(2) A city or town may accept the responsibility to operate and control such a district.

(3) An agreement for transfer of responsibilities from a county to a city or town must be properly executed in writing and must be approved by both governing bodies. Until an agreement is effective, the board of county commissioners or the multicounty district trustees, as the case may be, shall retain operation, control, and management of the district. The date of transfer of operation, control, and management is the date the agreement is fully effective or the date of transfer specified in the agreement, whichever is later.

History: **En. Sec. 1, Ch. 146, L. 1981.**

Cross-References

City and municipality defined, 7-12-2101.

7-12-2127. Transfer of operation, control, and ownership of improvement district facilities to a utility. Whenever a special improvement district has been created in accordance with the provisions of this part for the purpose of providing the facilities through which a regulated utility is to provide utility services to the district, the commissioners may, upon such terms and conditions as may be agreed to, transfer the operation, control, and ownership of the facilities to the regulated utility for use by the utility to provide utility services.

History: En. Sec. 1, Ch. 325, L. 1983.

7-12-2128 through 7-12-2130 reserved.

7-12-2131. Bids for district work — exception. (1) Except as provided in subsection (3), the board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind or type of materials to be used in making any of the improvements after the bids or proposals have been opened, examined, and declared.

(2) All proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter 1, part 2. The proposals or bids must be delivered to the county clerk.

(3) If the proposed improvement is the conversion of overhead utilities to an underground location as provided for in 7-12-4102(2)(i), the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part); amd. Sec. 1, Ch. 250, L. 1993.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — bids, 7-12-4141.

7-12-2132. Advertising for bids. A notice inviting proposals and referring to specifications on file with the engineer selected must be published as provided in 7-1-2121.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(1); amd. Sec. 21, Ch. 354, L. 2001.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Engineer defined, 7-12-2101.

7-12-2133. Competitive bidding not required for purchase of existing improvement. If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may in their discretion, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids or proposals; provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by 7-12-2105.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(6).

Cross-References

Board of County Commissioners defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.

7-12-2134. Opening of bids. (1) The board of county commissioners shall, in open session, publicly open and examine and declare the bids.

(2) The time fixed for the opening of the bids shall not be less than 15 days from the time of the final publication of the notice required by 7-12-2132.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — opening of bids, 7-12-4142.

7-12-2135. Decision on award of contract. (1) The board of county commissioners may award the contract for the work or improvement to the lowest responsible bidder at the prices named in the bid and shall reject all proposals other than the lowest regular proposal or bid of a responsible bidder.

(2) The board:

(a) may reject any proposals or bids if it considers this for the public good;

(b) may also reject the bid of a party who has been delinquent or unfaithful in a former contract with the board.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(4); amd. Sec. 533, Ch. 61, L. 2007.**

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — award of contract, 7-12-4143.

7-12-2136. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the board of county commissioners may within 6 months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner provided in 7-12-2131 through 7-12-2137.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).**

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — all bids rejected or no bids, 7-12-4144.

7-12-2137. Procedure for dealing with bid securities. (1) If bids are rejected, the board of county commissioners shall return to the proper parties the bid securities accompanying the rejected bids.

(2) The bid security accompanying the accepted proposal or bid must be held by the county clerk until the contract for doing the work has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, at which time the bid security must be returned to the bidder.

(3) If the bidder fails, neglects, or refuses to enter into the contract to perform the work and improvements, then the bid security accompanying the bid must be declared to be forfeited to the board and must be collected by the board and paid into the general fund of the county.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part); amd. Sec. 534, Ch. 61, L. 2007.**

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Special improvement district — bid securities, 7-12-4145.

7-12-2138. Contractor's bond for successful completion of work. All contractors and contracting owners included shall, at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, in the form and manner provided for in Title 18, chapter 2, part 2.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R.C.M. 1921; re-en. Sec. 4582, R.C.M. 1935; amd. Sec. 4, Ch. 220, L. 1975; R.C.M. 1947, 16-1609.**

Cross-References

Board of County Commissioners defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — contractor's bond, 7-12-4151.

7-12-2139. Procedure if person entering contract defaults on work. (1) If the contractor who may have taken a contract does not complete the contract within the time limited in the contract or within a further time that may be given, the engineer selected as provided in this part shall report the delinquency to the board of county commissioners.

(2) (a) The board may relet the unfinished portion of the work after pursuing the formalities prescribed in 7-12-2131 through 7-12-2137 for the letting of the contract in the first instance.

(b) The board may complete the contract and deduct any cost in excess of the contract price from any money, bond, or warrant due the contractor. If there is no money, bond, or warrant due the contractor from which to deduct the cost, then the board may sue the contractor and recover the costs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 8, Ch. 147, L. 1921; re-en. Sec. 4581, R.C.M. 1921; re-en. Sec. 4581, R.C.M. 1935; R.C.M. 1947, 16-1608; amd. Sec. 535, Ch. 61, L. 2007.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Engineer defined, 7-12-2101.

Special improvement district — default on work, 7-12-4152.

7-12-2140. Procedure for objection to proceedings. (1) At any time within 60 days from the date of the awarding of a contract, any owner or other person having a interest in any lot, tract, or plot of land liable to assessment who claims that any of the previous acts or proceedings relating to the improvements are irregular, defective, erroneous, or faulty or that the property will be damaged by making any of the improvements in the manner contemplated may file with the county clerk a written notice specifying in what respect the acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent the property will be damaged by making the improvements.

(2) The notice must state that it is made in pursuance of this section.

(3) All objections in any act or proceeding or in relation to making the improvements must be made in writing and in the manner and at the time provided in subsection (1). All claims for damages must be waived by the property owner if a written objection is not filed, if notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this part.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 10, Ch. 147, L. 1921; re-en. Sec. 4583, R.C.M. 1921; re-en. Sec. 4583, R.C.M. 1935; R.C.M. 1947, 16-1610; amd. Sec. 536, Ch. 61, L. 2007.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

7-12-2141. Protest procedures for property created as condominium. (1) Whenever property created as a condominium is included within the boundaries of a proposed district and the proposed work or the creation of the district relates to or affects property created as a condominium, and not solely a certain unit in the condominium, the owner of the property created as a condominium that is entitled to protest under this part is collectively the owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the proposed work or against the extent or creation of the district to be assessed, or both, only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the county clerk in accordance with 7-12-2109:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners as evidenced by the signatures of the owners are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the proposed work or against the extent or creation of the district, or both.

(3) Each holder of title to a unit in a condominium that is within a proposed district is entitled to notice of the passage of the resolution of intention as provided in this part, and if the district is created and assessments levied, assessments must be levied against the units in the condominium as provided in this part.

History: En. Sec. 7, Ch. 277, L. 2003.

7-12-2142 through 7-12-2150 reserved.

7-12-2151. Assessment of costs. (1) To defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the board of county commissioners shall assess the entire cost of the improvements against benefited lots, tracts, or parcels of land in the district, based upon the benefits received, and shall adopt one or any combination of the following methods of assessment for each improvement made or acquired for the benefit of the district:

(a) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited lots, tracts, or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a lot, tract, or parcel of land representing the benefit conferred upon the lot, tract, or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot, tract, or parcel.

(b) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited lots or pieces of land within the district, if the board determines the assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the lot, tract, or parcel.

(c) Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.

(d) Each lot, tract, or parcel of land in the district may be assessed an equal amount based upon the total cost of the improvement.

(e) Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.

(2) The board may use one or any combination of methods of assessment in a single special improvement district and, if more than one improvement is undertaken, need not assess each lot, tract, or parcel in the district for the cost of all the improvements.

(3) The board in its discretion may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of the costs within the amount of the assessment to be paid by the benefited property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part); amd. Sec. 10, Ch. 665, L. 1985; amd. Sec. 1, Ch. 269, L. 1993.

Cross-References

Board of County Commissioners defined, 7-12-2101.
City and municipality defined, 7-12-2101.
Street defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — assessment of costs, 7-12-4162 through 7-12-4165.

7-12-2152. Exception for owners of water ditches under certain circumstances. The owner or owners of open ditches carrying irrigation or other water shall not be included in any rural improvement district under this part for the purpose of assessment to support the rural improvement district for the installation, repair, or maintenance of any protective devices intended to protect the safety of the public from open ditches carrying irrigation or other water. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part); amd. Sec. 11, Ch. 665, L. 1985.

7-12-2153. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a rural improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-2101(7) are considered a part of the cost of making the improvements within the rural improvement district.

(2) If the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, the original costs of any improvement must include an amount of at least 5% and not more than 10% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-2181.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the board of county commissioners may create a district reserve account.

(b) As part of the original costs of the improvements, the board of county commissioners may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any rural improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the board of county commissioners from requiring additional security from the owners of real property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part); amd. Sec. 1, Ch. 476, L. 1983; amd. Sec. 12, Ch. 665, L. 1985; amd. Sec. 2, Ch. 229, L. 1995; amd. Sec. 1, Ch. 349, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 349 in (1) in two places substituted "rural improvement district" for "special improvement district"; in (2) near middle substituted "amount of at least 5% and not more than 10%" for "amount equal to 5%"; and in (3)(b) in first sentence after "rural" deleted "special". Amendment effective April 24, 2009.

Cross-References

Incidental expenses defined, 7-12-2101.

Special improvement district — incidental expenses, 7-12-4169.

7-12-2154. Payment of damages incurred as result of improvements. Whenever the owner or anyone interested in property situated in the special improvement district, after filing with the county clerk a written notice claiming that the person's property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of an improvement in the special improvement district and before the resolution levying the assessment to defray the cost of making the improvement in the district is passed and adopted by the board of county commissioners, the amount ordered to be recovered must be added to and constitute a part of making the improvements. However, if the resolution levying the assessment to defray the cost and expenses of making the improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in the district for the purpose of paying the amount awarded, and the supplemental resolution must be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R.C.M. 1921; re-en. Sec. 4588, R.C.M. 1935; R.C.M. 1947, 16-1615; amd. Sec. 4, Ch. 251, L. 1979; amd. Sec. 537, Ch. 61, L. 2007.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district — damages, 7-12-4170.

7-12-2155. Apportionment of costs between corner lots and inside lots. In order to apportion the cost of any of the improvements provided for in this part between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements provided for in this part shall be along any side street or abutting upon the side of any corner lot or block, the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part).**

Cross-References

Block defined, 7-12-2101.
Board of County Commissioners defined, 7-12-2101.
Street defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — corner lots, 7-12-4171.

7-12-2156. Responsibility for costs for improvements close to street railway. Whenever any portion of the surface of a street is kept or used by any person, firm, or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for 1 foot on each side thereof shall be paid by the person, firm, or corporation owning such railroad; and where double tracks of railroads are laid, such person, firm, or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(2).**

Cross-References

Street defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.

7-12-2157. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 12, Ch. 147, L. 1921; re-en. Sec. 4585, R.C.M. 1921; re-en. Sec. 4585, R.C.M. 1935; R.C.M. 1947, 16-1612.**

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — federal property, 7-12-4173.

7-12-2158. Resolution for levy and assessment of tax. (1) To defray the cost of making or acquiring improvements in a special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all benefited property in the district created for that purpose by using for a basis for assessment the method or methods provided for by this part and described in the resolution of intention.

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the payment becomes delinquent.

(3) The resolution, signed by the presiding officer of the board, must be kept on file in the office of the county clerk.

History: **(1), (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; Sec. 16-1613, R.C.M. 1947; (3)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec.**

4587, R.C.M. 1935; Sec. 16-1614, R.C.M. 1947; R.C.M. 1947, 16-1613(part), 16-1614(part); amd. Sec. 13, Ch. 665, L. 1985; amd. Sec. 538, Ch. 61, L. 2007.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — tax levy resolution, 7-12-4176.

7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, shall be:

(a) published as provided in 7-1-2121;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (such lands must be identified and the mailing address determined from the last-completed assessment roll for state, county, and school district taxes); and

(c) mailed to such other persons known to the clerk to have an ownership interest in the property.

(2) The notice shall state the time at and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners. The time for the hearing may not be less than 5 days after the second publication or less than 10 days after the mailing of the notice.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part); amd. Sec. 5, Ch. 251, L. 1979; amd. Sec. 17, Ch. 349, L. 1985; amd. Sec. 14, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — notice, 7-12-4177.

7-12-2160. Hearing on protest. (1) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The board may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part).

Cross-References

Clerk and County Clerk defined, 7-12-2101.
County Treasurer defined, 7-12-2101.

7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries — assessment for administrative costs. (1) The board of county commissioners shall estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or another time as may appear necessary.

(2) The board may, before the first Monday in September of each year, pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing the improvements within the district. An assessment authorized by the board must be proportioned as provided in 7-12-2108. In lieu of an assessment, the board shall otherwise provide for the whole cost of maintaining, preserving, or repairing the improvements in the district.

(3) The resolution levying assessments to defray the cost of maintenance, preservation, or repair of improvements must be prepared and certified to in substantially the same manner as a resolution levying assessments for making, constructing, and installing the improvements in the special improvement district.

(4) The board may change by resolution, not more than once a year, the boundaries of any maintenance district.

(5) The board shall include in the estimated cost of maintaining the district the lesser of $500 or 5% of the annual assessment of the district. The amount determined by the board under this subsection is to defray the costs incurred by the county in administering the maintenance district and is a cost of maintenance. The board shall annually pay the amount determined under this subsection to the county treasurer for deposit in the county general fund.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part); amd. Sec. 1, Ch. 175, L. 1997; amd. Sec. 9, Ch. 277, L. 2003.

Cross-References

Work, improved, or improvements defined, 7-12-2101.
Special improvement district — maintenance costs, 7-12-4179.

7-12-2162. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-2161 shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated. Such fund shall be used to defray the expense of maintenance, preservation, or repair of said improvements and for no other purpose.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

Cross-References

Special improvement district — maintenance fund, 7-12-4180.

7-12-2163. Collection of district assessments by county treasurer — delinquencies. (1) When a resolution of assessment, either for construction or maintenance, has been certified by the county clerk, the county treasurer shall, in accordance with the provisions of this title, collect the assessment in the same manner and at the same time as taxes for general and municipal purposes are collected.

(2) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of county commissioners and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R.C.M. 1921; re-en. Sec. 4595, R.C.M. 1935; R.C.M. 1947, 16-1622; amd. Sec. 2, Ch. 617, L. 1987; amd. Sec. 539, Ch. 61, L. 2007.

Cross-References

Clerk and County Clerk defined, 7-12-2101.
County Treasurer defined, 7-12-2101.
Special improvement district — collection of assessments, 7-12-4181.

7-12-2164. Payment of tax under protest — action to recover. (1) When a tax levied and assessed under any of the provisions of this part is considered unlawful by the party whose property is taxed or from whom the tax is demanded, the person may pay the tax or any part of the tax considered unlawful under protest to the county treasurer.

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the tax was paid or against the county in whose behalf the tax was collected to recover the tax or any portion of the tax paid under protest. An action instituted to recover the tax paid under protest must be commenced within 60 days after the date of payment.

(3) The tax paid under protest must be held by the county treasurer until the determination of an action brought for the recovery of the tax.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 24, Ch. 147, L. 1921; re-en. Sec. 4597, R.C.M. 1921; re-en. Sec. 4597, R.C.M. 1935; R.C.M. 1947, 16-1624; amd. Sec. 540, Ch. 61, L. 2007.

Cross-References

County Treasurer defined, 7-12-2101.
Special improvement district — payment of tax under protest, 7-12-4185.
Taxation — protest payment, Title 15, ch. 1, part 4.

7-12-2165. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by the law or resolution relating thereto. The board may reassess and relevy the tax or assessment with the same force and effect as an original levy.

(2) Any special tax, upon reassessment or relevy, shall, so far as practicable, be levied and collected the same as it would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax are subject to the qualifications of this part.

(3) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the assessment may be corrected and reassessed for such additional amount as is proper or the assessment may be reduced even to the extent of refunding the tax collected.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 23, Ch. 147, L. 1921; re-en. Sec. 4596, R.C.M. 1921; re-en. Sec. 4596, R.C.M. 1935; R.C.M. 1947, 16-1623(part); amd. Sec. 6, Ch. 251, L. 1979.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district — procedure to correct assessment, 7-12-4186.

7-12-2166. Certain errors not to invalidate assessments or liens. (1) When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this part unless it is impossible to identify the property from the description.

History: (1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R.C.M. 1921; re-en. Sec. 4591, R.C.M. 1935; Sec. 16-1618, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 25, Ch. 147, L. 1921; re-en. Sec. 4598, R.C.M. 1921; re-en. Sec. 4598, R.C.M. 1935; Sec. 16-1625, R.C.M. 1947; R.C.M. 1947, 16-1618, 16-1625.

Cross-References

Special improvement district — errors, 7-12-4187.

7-12-2167. Term of payment of assessments. (1) Except as provided in subsection (2), the payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years.

(2) If federal loans are available, payments may be spread over a term of not to exceed 40 years.

(3) The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the board of county commissioners so prescribes in the resolution authorizing issuance of the special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(4) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; R.C.M. 1947, 16-1613(part); amd. Sec. 15, Ch. 665, L. 1985; amd. Sec. 1, Ch. 631, L. 1987.

Cross-References

Work, improved, or improvements defined, 7-12-2101.

Special improvement district — payment by installments, 7-12-4190.

7-12-2168. Assessments and certain other charges as liens. (1) A special assessment made and levied to defray the cost and expenses of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon and against the property upon which the assessment is made and levied from and after the date of the passage of the resolution levying the assessment. This lien can only be extinguished by payment of the assessment, with all penalties, costs, and interest.

(2) A special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, constitutes a lien upon and against the property upon which the assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the assessment. The lien is extinguished only by payment of the assessment, with all penalties, costs, and interest.

(3) For assessment purposes, whenever property created as a condominium is included within the boundaries of a district, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of an undivided ownership interest must be as set forth in the condominium declaration.

History: (1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R.C.M. 1921; re-en. Sec. 4590, R.C.M. 1935; Sec. 16-1617, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619; R.C.M. 1947, 16-1617, 16-1619(part); amd. Sec. 10, Ch. 277, L. 2003.

Cross-References

Work, improved, or improvements defined, 7-12-2101.
Special improvement district — liens, 7-12-4191.

7-12-2169. Use of bonds and warrants. All costs and expenses incurred in any improvement district in the acquisition, construction, or maintenance of any improvement specified in this part or incurred in the issuance of bonds or warrants of the district, including incidental expenses, shall be paid for by special improvement district bonds or warrants. The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the method provided in 7-12-2172 and 7-12-2173.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 18, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Work, improved, or improvements defined, 7-12-2101.
Special improvement district — use of bonds and warrants, 7-12-4201.

7-12-2170. Repealed. Sec. 16, Ch. 449, L. 1989.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 1, Ch. 308, L. 1981.

7-12-2171. Details relating to rural improvement district bonds and warrants. (1) (a) The bonds and warrants must be drawn against either the construction or maintenance fund created for the special improvement district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the board of county commissioners. The terms determined by the board of county commissioners may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the board of county commissioners obtains separate written opinions from underwriters of Montana rural improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates that the board prescribes. The warrants or bonds must bear the signatures of the presiding officer of the board and the county clerk and may bear the corporate seal of the county. The warrants or bonds must be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, the interest coupons must also be registered and must bear the signatures of the presiding officer of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

(3) If applicable, the board of county commissioners shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(2); amd. Sec. 19, Ch. 665, L. 1985; (4)En. Sec. 20, Ch. 665, L. 1985; amd. Sec. 5, Ch. 256, L. 1989; amd. Sec. 1, Ch. 449, L. 1989; amd. Sec. 9, Ch. 459, L. 1997; amd. Sec. 1, Ch. 162, L. 2001; amd. Sec. 11, Ch. 277, L. 2003; amd. Sec. 7, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 489 inserted (3) concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds. Amendment effective May 14, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Clerk and County Clerk defined, 7-12-2101.
County Treasurer defined, 7-12-2101.
Special improvement district — definitions of bond forms, 7-12-4203.

7-12-2172. Procedure to issue bonds and warrants. (1) Subject to subsection (2), the board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

(2) (a) Subject to subsection (2)(b), the bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.

(b) Bonds in amounts up to $1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 that relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as they are applicable and not in conflict with the provisions of 7-12-2173 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 21, Ch. 665, L. 1985; amd. Sec. 2, Ch. 449, L. 1989; amd. Sec. 3, Ch. 6, L. 1993; amd. Sec. 1, Ch. 287, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 287 in (1) at beginning of first sentence inserted "Subject to subsection (2)"; in (2)(a) at beginning inserted "Subject to subsection (2)(b)"; inserted (2)(b) allowing the sale of certain bonds to Montana financial institutions through private negotiated sale; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.
Special improvement district — procedure to issue bonds and warrants, 7-12-4204.

7-12-2173. Disposition of bond or warrant proceeds. (1) The board of county commissioners shall use the proceeds of such sale in making payment for the cost of the improvements. Payments to contractors may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

(2) All interest earned on the investment of bond or warrant proceeds during the construction of improvements must be credited to the construction account of the improvement district fund from which the proceeds were withdrawn.

(3) Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 2, Ch. 382, L. 1983; amd. Sec. 23, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Engineer defined, 7-12-2101.
Special improvement district — disposition of proceeds, 7-12-4205.

7-12-2174. Redemption of bonds and warrants. (1) The county treasurer shall first pay out of the proper special improvement district fund, on each interest payment date, the interest on all outstanding warrants or bonds on presentation of the coupons belonging to the warrants or bonds or otherwise then payable and the principal, if any, then payable on the warrants or bonds. Any funds remaining in the fund must be applied to the redemption of the warrants or bonds in the order specified in the resolution authorizing the issuance of the bonds.

(2) Special improvement district warrants or bonds must be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-2173, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants may otherwise be subject to redemption and prepayment as provided in the resolution on any interest payment date.

(3) The date of redemption must be fixed by the county treasurer and may not be less than 30 days after the date of publication or of mailing of the notice. The county treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the county treasurer shall publish notice of redemption once in a newspaper of general circulation in the county. On the date fixed for redemption, interest must cease.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(3); amd. Sec. 24, Ch. 665, L. 1985; amd. Sec. 37, Ch. 423, L. 1995.

Cross-References

City and municipality defined, 7-12-2101.
County Treasurer defined, 7-12-2101.
Special improvement district — redemption, 7-12-4206.

7-12-2175. Investment of maintenance, interest, and sinking fund money. (1) The governing body of a county in which a special improvement district or maintenance district is located may invest maintenance, interest, and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the United States government.

(2) Interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn.

History: **En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part); amd. Sec. 1, Ch. 382, L. 1983; amd. Sec. 8, Ch. 421, L. 1985; amd. Sec. 13, Ch. 10, L. 1993; amd. Sec. 1, Ch. 101, L. 1993.**

Cross-References

Special improvement district — investment of interest and sinking fund money, 7-12-4207.

7-12-2176. Interest rate on unpaid assessments. (1) Except as provided in subsection (3), the installments of assessments remaining unpaid bear simple interest at an annual rate equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the rural special improvement district at the time the assessment is levied each fiscal year; plus

(c) at the option of the board of county commissioners, up to an additional 1/2 of 1% a year.

(2) The board of county commissioners may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

(3) If and so long as the bonds or warrants secured by the assessments bear interest at a variable rate, the installments of assessments remaining unpaid must bear simple interest at an annual rate equal to the sum of:

(a) 1% a year; plus

(b) the interest rate payable on the outstanding bonds or warrants of the rural special improvement district at the time the assessment is levied each fiscal year; plus

(c) to the extent that the interest rate on the bonds or warrants is then less than the maximum rate prescribed for the bonds or warrants or if there is no prescribed maximum rate, up to an additional 1% a year, as may be prescribed by the board of county commissioners in the resolution authorizing the issuance or sale of the bonds or warrants.

History: **En. Sec. 16, Ch. 665, L. 1985; amd. Sec. 3, Ch. 229, L. 1995; amd. Sec. 2, Ch. 162, L. 2001.**

7-12-2177 through 7-12-2180 reserved.

7-12-2181. Creation of rural improvement district revolving fund. The board of county commissioners of any county in the state which may create any rural special improvement district or districts for any purpose may (in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein and the interest thereon as it becomes due) create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund. Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged.

History: **En. Sec. 1, Ch. 188, L. 1957; R.C.M. 1947, 16-1633; amd. Sec. 1, Ch. 422, L. 1983.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district — revolving fund, 7-12-4221.

7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the board of county commissioners:

(a) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, include in the cost of the improvements to be paid from the proceeds of the bonds or warrants an amount of at least 5% and not more than 10% of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);

(b) may, from time to time, transfer to the revolving fund from the general fund of the county an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.

(c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the county as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund will exceed 10% or, with the amount levied by the tax, will exceed 10% of the principal amount of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund after all required transfers have been made to the district funds through fiscal yearend.

(2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or

warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-2183 must, by order of the board, be transferred to the revolving fund and the balance of the money or, if there is no outstanding loan, as much of the money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds and warrants secured by the revolving fund issued on any rural improvement district have been fully paid, all money remaining in the district fund must, by order of the board, be transferred to and become part of the revolving fund or the improvement district's maintenance fund.

History: **En. Secs. 2, 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1634, 16-1636(part); amd. Sec. 2, Ch. 308, L. 1981; amd. Sec. 2, Ch. 422, L. 1983; amd. Sec. 1, Ch. 621, L. 1985; amd. Sec. 4, Ch. 229, L. 1995; amd. Sec. 2, Ch. 349, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 349 in (1)(a) near end substituted "amount of at least 5% and not more than 10%" for "amount equal to 5%"; in (1)(c) in second sentence after "revolving fund" substituted "will exceed 10% or, with the amount levied by the tax, will exceed 10%" for "exceeds 5%", after "rural" deleted "special", at end inserted "after all required transfers have been made to the district funds through fiscal yearend", and deleted former third sentence that read: "If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured by the revolving fund"; and in (2) in second sentence near middle after "rural" deleted "special". Amendment effective April 24, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — sources of money, 7-12-4222.

7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs. (1) During the period described in 7-12-2185(2), when any rural special improvement district bond or warrant secured by the revolving fund or any interest on the bond or warrant becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned and money available in the district fund. The loan must be made even if, in the case of bonds or warrants bearing interest at a variable rate, the interest rate on the special assessments at the time the loan is made is less than or later becomes less than the interest rate on the bonds or warrants.

(2) If there is insufficient money in the rural special improvement district maintenance fund to pay the cost of emergency repairs, the board of county commissioners, by order or resolution, may loan money from the revolving fund to the district maintenance fund. The loan must be repaid in annual installments in not more than 3 years. The loans may not cause a default in the payments of the principal of the bonds or warrants or the interest on the bonds or warrants. The loan must be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are insufficient funds in the revolving fund to make the loans without causing a default in the payment of the principal of the bonds or warrants or the interest on the bonds or warrants secured by the revolving fund, then the loans may not be made.

History: **En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(1); amd. Sec. 1, Ch. 339, L. 1981; amd. Sec. 3, Ch. 422, L. 1983; amd. Sec. 5, Ch. 229, L. 1995; amd. Sec. 3, Ch. 162, L. 2001.**

Cross-References

Board of County Commissioners defined, 7-12-2101.
Special improvement district — loans from revolving fund, 7-12-4223.

7-12-2184. Lien arising due to loan from revolving fund. (1) Whenever a loan is made to any rural special improvement district fund from the revolving fund, the revolving fund has a lien for the amount of the loan on the land within the district for which payments of assessments are delinquent and on all unpaid assessments and installments of assessments on the district, whether delinquent or not. The lien also applies to all money coming into the district fund up to the amount of the loan, together with interest on the loan from the time it was made, at the interest rate that is borne by the bond or warrant for which the loan was made and that was determined at the time the loan was made, even if the interest rate on the bond or warrant subsequently changes.

(2) If, after all the bonds and warrants issued on any rural special improvement district have been fully paid and all money remaining in the district fund has been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of

county commissioners may foreclose the lien upon property within the district for which unpaid assessments are owed to the district for the purpose of paying off the loan to the revolving fund.

History: **En. Sec. 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1636(part); amd. Sec. 4, Ch. 162, L. 2001.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district — liens, 7-12-4224.

Liens, Title 71, ch. 3, part 1.

7-12-2185. Covenants to use revolving fund — duration of revolving fund obligation — factors to be considered. (1) In connection with the issuance of rural improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available;

(b) to provide funds for the revolving fund pursuant to the provisions of 7-12-2182 by annually making a tax levy or, in lieu of the tax levy, a loan from the general fund, subject to the maximum limitations imposed by 7-12-2182; and

(c) to retain in the revolving fund a balance up to 10% of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund.

(2) (a) The undertakings and agreements are binding upon the county with respect to the rural improvement district bonds or warrants until the earlier of:

(i) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the rural improvement district is the debtor; or

(ii) the date that is the later of:

(A) the final stated maturity date of the bonds or warrants; or

(B) the date on which all special assessments levied in the district have been either paid or discharged.

(b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:

(i) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or

(ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(4) Any findings or determinations with respect to the factors contained in subsection (3) made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required by subsection (3).

(5) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund.

History: **En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(2); amd. Sec. 4, Ch. 422, L. 1983; amd. Secs. 6, 15, Ch. 229, L. 1995; amd. Sec. 3, Ch. 349, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 349 in (1) and (2)(a) after "rural" deleted "special"; inserted (1)(c) concerning retaining balance of up to 10% in revolving fund; in (2)(a)(i) near middle substituted "rural" for "special"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district — covenants to use and duration of revolving fund, 7-12-4225.

7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of the amount deposited pursuant to 7-12-2153(2) and in excess of 10% of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured by the revolving fund or interest on the revolving fund, the board may order that any part of the amount the board considers greater than the amount necessary to be:

(1) transferred to the general fund of the county;

(2) used for the purchase of property at sales for delinquent taxes, assessments, or both; or

(3) used for the purchase of property that may have been struck off or sold to the county for delinquent taxes, assessments, or both and against which there is an unpaid assessment for special improvements and there are outstanding special improvement district bonds or warrants of the city or town.

History: **En. Sec. 5, Ch. 188, L. 1957; R.C.M. 1947, 16-1637; amd. Sec. 3, Ch. 308, L. 1981; amd. Sec. 5, Ch. 422, L. 1983; amd. Sec. 4, Ch. 349, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 349 in introductory clause near beginning after "excess of" substituted "the amount deposited pursuant to 7-12-2153(2) and in excess of 10%" for "5%", and after "rural" deleted "special"; inserted (2) and (3) concerning purchase of property for delinquent taxes or assessments; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Special improvement district — use of excess money, 7-12-4227.

7-12-2187 through 7-12-2190 reserved.

7-12-2191. Change in outstanding principal of district — relevy of assessments. If proceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of the bonds or warrants, as provided in 7-12-2173 and 7-12-2174, or if refunding bonds are issued pursuant to 7-12-2193 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of the prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued. The board shall reassess and relevy the assessments, with the same effect as an original levy, in reduced or increased amounts, in accordance with the provisions of 7-12-2158 through 7-12-2160.

History: **En. Sec. 17, Ch. 665, L. 1985; amd. Sec. 3, Ch. 449, L. 1989.**

7-12-2192. Pooling of bonds of districts in county. (1) If the board of county commissioners determines by resolution that the pooling of bonds of more than one special improvement district of the county is in the best interest of the county and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the county may issue bonds of the districts combined in a single offering. Such bonds must be secured by the rural special improvement district revolving fund of the county.

(2) The title of the bonds issued pursuant to this section shall denote that bonds of different special improvement districts have been pooled and shall refer to the numbers of the districts. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which must be payable the assessments levied in each of the districts.

History: En. Sec. 22, Ch. 665, L. 1985.

7-12-2193. Refunding bonds. (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) (i) the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded;

(ii) the refunding bonds are to bear interest at a variable rate and the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or

(iii) the bonds to be refunded bear interest at a variable rate and the board determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the county or the board determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;

(b) there is or will be on the next payment date default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

History: En. Sec. 25, Ch. 665, L. 1985; amd. Sec. 2, Ch. 631, L. 1987; amd. Sec. 4, Ch. 449, L. 1989; amd. Sec. 5, Ch. 162, L. 2001; amd. Sec. 12, Ch. 451, L. 2005.

7-12-2194 and 7-12-2195 reserved.

7-12-2196. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

7-12-2197 reserved.

7-12-2198. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: En. Sec. 12, Ch. 162, L. 2005.

Part 22
Special Provisions for Districts for Lighting

7-12-2201. Maintenance of lighting system. When there has been or shall be created a rural improvement district, according to the provisions of part 21, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, the board of county commissioners of such county may enter into a contract with other persons or corporations for the purpose of furnishing light to said rural improvement district when:

(1) no expense of construction is incurred by such rural improvement district in the installation of such lighting system;

(2) it is necessary only to secure funds for the maintenance and operation of said system; and

(3) lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(1).

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2202. Apportionment of costs of maintaining lighting system. (1) The cost of the maintenance and operating service to a lighting rural improvement district may be apportioned among the various tracts of land within the district:

(a) in proportion to the assessed value of the lands within the district, as determined by the board of county commissioners;

(b) by assessing the cost equally against each of the lots or parcels located within the district;

(c) at the option of the board and as determined by the board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

(d) in proportion to the area, as determined by the board, of that portion of each tract included in the district.

(2) (a) Before the first Monday of September of each year, the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining the lighting system. The levy and assessment must be proportioned against the tracts of land in the district as provided in this part.

(b) The resolution levying assessments to defray the cost of maintenance must be prepared and certified to in the same manner as a resolution levying assessments for making, constructing, and installing improvements in the district.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part); amd. Sec. 1, Ch. 154, L. 2007.

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2203. Rural improvement district maintenance fund. (1) The money collected pursuant to 7-12-2202, shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

(2) Such funds shall be used to defray the expense of maintenance of said system and for no other purpose.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2204. Alteration of maintenance district boundaries. The board has the power, by resolution, of changing not more than once a year, the boundaries of any maintenance district.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

7-12-2205. Assessment and certain other charges as lien. Any assessment levied and made for any purpose mentioned in this part, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same. This lien can be only extinguished by payment of such assessments, with all penalties, costs, and interest.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2206. Application of part. Provisions of this part shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

Part 23
Special Provisions for Districts for Sanitary and Storm Sewers

7-12-2301. Rental provisions of municipal public sewer law applicable to rural districts. The provisions of part 42 of chapter 13 referring to sewer rentals apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, and the powers conferred on councils in part 42 of chapter 13 are conferred on each board of county commissioners as far as those powers relate to sewer rentals.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(6); amd. Sec. 7, Ch. 251, L. 1979.

Parts 24 through 39 reserved

Part 40
Park Maintenance Districts
(Repealed)

7-12-4001. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 510, L. 1999.

Part 41
Special Improvement Districts

7-12-4101. Definitions. Unless the context indicates otherwise, as used in part 42 and this part, the following definitions apply:

(1) "Blocks" means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) "City" or "municipality" means all corporations organized for municipal purposes.

(3) "City clerk" or "clerk" means a person or officer who is clerk of the council.

(4) "City council" means a body or board that is the legislative department of the government of the city.

(5) "City engineer" means a person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) "City treasurer" means a person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) "Incidental expenses" means:

(a) the compensation of the city engineer for work done;

(b) the cost of printing and advertising as provided in part 42 and this part;

(c) the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part;

(d) the expenses of making the assessment for any work authorized by this part;

(e) interest on warrants of the city issued to pay costs of improvements;

(f) costs of issuance of bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, attorney fees and financial consultants' fees, a premium for bond insurance, and the price paid by the original purchaser of the bonds that is less than the face amount of the bonds;

(g) interest to accrue on bonds or warrants of the special improvement district before assessments levied in the district are collected in amounts and at times sufficient to pay the interest; and

(h) a reasonable administrative fee payable to the city for the creation and administration of the district by the city, its officers, and its employees.

(8) "Main street" means the actually opened street that bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) that the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having frontage on either of two intersecting streets halfway from the intersection to the next main street or, when a main street does not intervene, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places that have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets that lies between lines drawn from corner to corner of all lot lines immediately cornering at the juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in part 42 and this part and also the construction, reconstruction, and repair of any portion of the work.

History: **En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part); amd. Sec. 8, Ch. 251, L. 1979; amd. Sec. 26, Ch. 665, L. 1985; amd. Sec. 541, Ch. 61, L. 2007.**

Cross-References

Rural special improvement district, 7-12-2101.

7-12-4102. Authorization for creation of special improvement districts — petition for creation. (1) The city or town council may:

(a) create special improvement districts, designating them by number;

(b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;

(c) make the assessments payable in installments; and

(d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) land, structures, and appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(4) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. Properties within the proposed district boundaries outside the city may not be included in the special improvement district if, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels outside the city representing not less than 40% of the total projected assessments against properties outside the city protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions.

History: (1)En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.79, R.C.M. 1947; amd. Sec. 11, Ch. 234, L. 1971; Sec. 11-982, R.C.M. 1947; (2)En. Sec. 2, Ch. 89, L. 1913; amd Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; Sec. 11-2202, R.C.M. 1947; R.C.M. 1947, 11-982, 11-2202(part); (3)En. Sec. 2, Ch. 342, L. 1981; amd. Sec. 27, Ch. 665, L. 1985; amd. Sec. 1, Ch. 116, L. 1987; amd. Sec. 5, Ch. 449, L. 1989; amd. Sec. 1, Ch. 54, L. 1991; amd. Sec. 2, Ch. 250, L. 1993; amd. Sec. 4, Ch. 591, L. 2001; amd. Sec. 2, Ch. 93, L. 2007; amd. Sec. 1, Ch. 163, L. 2007.

Cross-References

Rural special improvement district, 7-12-2102.

7-12-4103. Formation of district to defray cost of acquiring private property. The city council is also hereby authorized to create a district as hereinafter specified for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(part).

7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof; and

(d) specify the method or methods by which the costs of the improvements will be assessed against property in the district.

(3) When any improvement is to be made in paving, the city or town council may, in describing the general character of it in the resolution, describe several kinds of paving.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(1); amd. Sec. 28, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — resolution of intention, 7-12-2103.

7-12-4105. Reference to description in resolution of intention sufficient. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements in any and all improvement districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R.C.M. 1921; re-en. Sec. 5231, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1955; R.C.M. 1935, 11-2208.

Cross-References

Rural special improvement district — sufficiency of description, 7-12-2104.

7-12-4106. Notice of passage of resolution of intention — exception. (1) Except as provided in subsection (4), upon having passed the resolution of intention pursuant to 7-12-4104, the council shall give notice of the passage of the resolution of intention.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to each person, firm, or corporation or the agent of the person, firm, or corporation having real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes, at the owner's last-known address, upon the same day that the notice is first published or posted.

(3) (a) The notice must describe the general character of the proposed improvements, state the estimated cost of the improvements, describe generally the method by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a district that is created under 7-12-4114 following receipt of a petition as provided in 7-12-4102(3).

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part); amd. Sec. 29, Ch. 665, L. 1985; amd. Sec. 7, Ch. 229, L. 1995; amd. Sec. 3, Ch. 93, L. 2007.

Cross-References

Rural special improvement district — notice, 7-12-2105.

7-12-4107. Repealed. Sec. 70, Ch. 354, L. 2001.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(4).

7-12-4108. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913; re-en. Sec. 5257, R.C.M. 1921; re-en. Sec. 5257, R.C.M. 1935; R.C.M. 1947, 11-2243.

Cross-References

Rural special improvement district — publication of notice, 7-12-2107.

7-12-4109. Extension of proposed district. The city council may charge the expenses of the work or improvement to lots not fronting on the improvement and which the council in its resolution of intention declares to be, together with the lots abutting the improvement, the property benefited by the work or improvements whenever:

(1) the contemplated work of improvement, in the opinion of the council, is of more than local or ordinary public benefit; or

(2) the total estimated costs and expenses thereof, according to estimates furnished by the city engineer, would exceed one-fifth of the total taxable value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll.

History: **En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929; re-en. Sec. 5228, R.C.M. 1935; amd. Sec. 29, Ch. 566, L. 1977; R.C.M. 1947, 11-2205; amd. Sec. 30, Ch. 665, L. 1985.**

Cross-References

Rural special improvement district — extension of proposed district, 7-12-2108.

7-12-4110. Protest against proposed work or district. (1) (a) Except as provided in subsections (1)(b) and (2), at any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

(2) The provisions of subsection (1) do not apply to a district created under 7-12-4114 as a result of a petition submitted as provided in 7-12-4102(3).

(3) A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within the protest period. The clerk shall endorse on the protest document the date and hour of its receipt by the clerk.

(4) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.

History: **En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(1); amd. Sec. 31, Ch. 665, L. 1985; amd. Sec. 12, Ch. 277, L. 2003; amd. Sec. 2, Ch. 401, L. 2005; amd. Sec. 4, Ch. 93, L. 2007.**

Cross-References

Rural special improvement district — right to protest, 7-12-2109.

7-12-4111. Repealed. Sec. 23, Ch. 277, L. 2003.

History: **En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(1).**

7-12-4112. Hearing on protest. (1) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) The council or commission may adjourn said hearing from time to time. Protestants shall have the right to withdraw protest or protests at any time before final action thereon by the council or commission.

(3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district.

History: **En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part).**

Cross-References

Rural special improvement district — hearing, 7-12-2111.

7-12-4113. Sufficient protest to bar proceedings — exceptions. (1) Except as provided in subsections (2) and (3), no further proceedings shall be taken for a period of 6 months from the date when said protest shall have been received by said clerk of the city or town council or commission when:

(a) the council or commission finds that such protest is made by the owners of property in the district to be assessed for more than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention; or

(b) the cost thereof is to be assessed upon the property within an extended district and the council or commission finds that such protest is made by the owners of more than 50% of the area of the property to be assessed for said improvements.

(2) The council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface when the improvement proposed is the paving, with necessary incidentals, of not more than one cross block to connect with streets or avenues already paved for a continuous distance of three blocks or more running at a right angle (or substantially so) with the single cross block so proposed to be paved.

(3) In case the improvement is the construction of a sanitary sewer, such protest may be overruled by an affirmative vote of a majority of the members of the council or commission unless such protest is made by the owners of property in the district to be assessed for more than 75% of the cost of the district, in accordance with the methods of assessment described in the resolution of intention, in which event the protest must be sustained as to the construction of such sanitary sewer.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part); amd. Sec. 32, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — sufficient protest, 7-12-2112.

7-12-4114. Resolution creating special improvement district. (1) The council may order proposed improvements after:

(a) no protests have been delivered to the clerk of the city council within the time prescribed in 7-12-4110 after the date of the first publication of the notice of the passing of the resolution of intention;

(b) a protest has been found to be insufficient or has been overruled;

(c) a protest against the extent of the proposed district has been heard and denied; or

(d) a resolution creating the district following receipt of a petition as provided in 7-12-4102(3) has been passed.

(2) Before ordering any of the proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention introduced and passed by the council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915; re-en. Sec. 5230, R.C.M. 1921; re-en. Sec. 5230, R.C.M. 1935; R.C.M. 1947, 11-2207; amd. Sec. 3, Ch. 401, L. 2005; amd. Sec. 5, Ch. 93, L. 2007.

Cross-References

Rural special improvement district — resolution creating district, 7-12-2113.

7-12-4115. Statement of allocation of assessments to improvements, repairs, and maintenance. In all cities or towns, the city or town council shall have power and it is hereby made the duty of each council (where it is necessary or advisable in connection with any special improvement district to provide, in addition to the construction of the proposed improvements, for repairs to existing facilities or for maintenance of improvements or repairs or for both such repairs and maintenance) to include in the resolution or ordinance creating such special improvement district or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes: to improvements, to repairs, if any, and to maintenance, if any.

History: En. Sec. 1, Ch. 39, L. 1953; R.C.M. 1947, 11-2286.

7-12-4116. Designation of nature of improvement district. In all cases set out in 7-12-4115, the city or town council shall designate the special district formed as a special improvement and repair district or a special improvement and maintenance district or a special improvement, repair, and maintenance district, as the case may be.

History: En. Sec. 2, Ch. 39, L. 1953; R.C.M. 1947, 11-2287.

7-12-4117. Combination of several improvements in one resolution. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this part and any number of streets and rights-of-way or portions thereof, and it may except therefrom any of said work already done upon a street to the official grade.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part).

7-12-4118. Adjournment of hearings. Whenever in proceedings hereunder a time and place for hearing are fixed by the city council and from any cause the hearing is not then and there held or regularly adjourned to a fixed time and place, the power or jurisdiction of the council in the premises shall not thereby be divested or lost, but the council may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the council shall have power to act as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913; re-en. Sec. 5256, R.C.M. 1921; re-en. Sec. 5256, R.C.M. 1935; R.C.M. 1947, 11-2242.

Cross-References

Rural special improvement district — adjournment of hearing, 7-12-2115.

7-12-4119. Appointment of person to serve as city engineer. In all those cities where there is no city engineer, the city council is hereby authorized and empowered to appoint a suitable person to discharge the duties laid down as those of the city engineer in this part, and all provisions of this part applicable to the city engineer shall apply to such person so appointed.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part).

Cross-References

Rural special improvement district — district engineer, 7-12-2116.

7-12-4120. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duties imposed upon said officer by the provisions of this part and part 42 shall be performed by the president of the council or other chief executive officer of the municipality.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(10).

Cross-References

Rural special improvement district — district engineer, 7-12-2116.

7-12-4121. Record of expenses to be kept by city engineer. The city engineer shall keep an account of all costs and expenses incurred in the engineer's office in connection with each special improvement district and certify the costs and expenses to the city clerk.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part); amd. Sec. 542, Ch. 61, L. 2007.

Cross-References

Rural special improvement district — record of expenses, 7-12-2117.

7-12-4122. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).

Cross-References

Rural special improvement district — role of County Clerk, 7-12-2118.

7-12-4123. Manner of making demands for incidental expenses. All demands for incidental expenses mentioned in 7-12-4101(7), except the administrative fee of the city and interest payable on warrants or bonds of the district, shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part); amd. Sec. 33, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — incidental expenses, 7-12-2119.

7-12-4124. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

7-12-4125 through 7-12-4129 reserved.

7-12-4130. Transfer of operation, control, and ownership of improvement district facilities to a utility. Whenever a special improvement district has been created in accordance with the provisions of this part for the purpose of providing the facilities through which a regulated utility is to provide utility services to the district, the commissioners may, upon such terms and conditions as may be agreed to, transfer the operation, control, and ownership of the facilities to the regulated utility for use by the utility to provide utility services.

History: En. Sec. 1, Ch. 325, L. 1983.

7-12-4131. Modification of trafficways and courts for special improvement districts. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated or which may hereafter be opened or dedicated to public use, are open public streets, alleys, places, or courts for the purposes of this part. The city council of each municipality may establish and change the grades of the streets, alleys, places, or courts and fix the width thereof and may acquire private property for right-of-way and order to be done any of the work mentioned in this part under the proceedings described in this part.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(1).

7-12-4132. Power to require underground placement of utilities within district. (1) Unless the purpose of the special improvement district is the conversion of existing overhead utilities to an underground location, the city council has the same jurisdiction and powers as provided in 7-12-4102 and 7-12-4103 (before doing any of the work mentioned in this part) to require a public service corporation or company, firm, or person occupying the streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, to place in an underground conduit, in a manner as may be directed by the council, all wires; electric conduits; or telephone, telegraph, power, or power transmission lines or appurtenances to them or appliances owned, held, or enjoyed in connection with them.

(2) The whole cost so assessed may at no time exceed the costs incurred.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(2); amd. Sec. 1, Ch. 594, L. 1979; amd. Sec. 3, Ch. 250, L. 1993.

7-12-4133. Power to require certain utility connections. (1) The city or town council shall have power to require connections from gas pipes, water pipes, steam heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located and to regulate the making of such connections on the already improved streets or on unimproved streets.

(2) (a) In case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, the council may cause such connections to be made and shall assess against the property in front of which said connections are made the entire cost and expense thereof.

(b) All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in part 44 of chapter 6 and amendments thereof. All such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R.C.M. 1921; re-en. Sec. 5226.1, R.C.M. 1935; R.C.M. 1947, 11-2203.

7-12-4134. Special provision for paving street in which car tracks are located. Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and 1 foot on each side of the rails to be of a different kind from that used in the remainder of the street. The general character of the material to be used between the car tracks and 1 foot on each side of the rails shall be described in the resolution of intention in the same manner as the general character of the material used for the rest of the contemplated pavement.

History: **En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(3).**

7-12-4135. Responsibility for repairs due to operation of street railway. (1) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway, either in the operation of its cars or in the laying or repair of its tracks.

(2) In case of a failure or refusal of such owner or operator to so repair such pavement within a reasonable time after notice by the city council or commission, the council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

History: **En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(2).**

7-12-4136. Maintenance of improvements. Where trees have been planted or grassplots constructed and grass sown thereon or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed and to otherwise maintain and preserve said improvements as the council shall deem suitable and proper.

History: **En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).**

Cross-References

Rural special improvement district — maintenance of improvements, 7-12-2120.

7-12-4137. Protest procedures for property created as condominium. (1) Whenever property created as a condominium is included within the boundaries of a proposed district and the proposed work or the creation of the district relates to or affects property created as a condominium, and not solely a certain unit in the condominium, the owner of the property created as a condominium that is entitled to protest under this part is collectively the owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the proposed work or against the extent or creation of the district to be assessed, or both, only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the clerk of the city or town council or commission in accordance with 7-12-4110:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners as evidenced by the signatures of the owners are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the proposed work or against the extent or creation of the district, or both.

(3) Each holder of title to a unit in a condominium that is within a proposed district is entitled to notice of the passage of the resolution of intention as provided in this part, and if the district is created and assessments levied, assessments must be levied against the units in the condominium as provided in this part.

History: **En. Sec. 13, Ch. 277, L. 2003.**

7-12-4138 through 7-12-4140 reserved.

7-12-4141. Bid for work — exception. (1) Except as provided in subsection (4), the city council may call for bids or proposals for several kinds and types of materials for the improvements proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be used in making the improvements after the bids or proposals have been opened, examined, and declared.

(2) Notice inviting proposals and referring to the specifications on file must be published as provided in 7-1-4127.

(3) The time fixed for the opening of bids may not be less than 5 days or more than 12 days from the time of the final publication of the notice. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for opening bids. The proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter 1, part 2. The proposals or bids must be delivered to the clerk of the city council.

(4) If the proposed improvement is the conversion of overhead utilities to an underground location, the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 4, Ch. 250, L. 1993; amd. Sec. 22, Ch. 354, L. 2001.

Cross-References

Rural special improvement district — bids, 7-12-2131.

7-12-4142. Opening of bids. The bids shall be opened in public at a time and place to be designated by the city council in the notice inviting bid proposals made pursuant to 7-12-4141.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 1, Ch. 6, L. 1989.

Cross-References

Rural special improvement district — opening of bids, 7-12-2134.

7-12-4143. Decision on award of contract. (1) The city council may award the contract for the work or improvement to the lowest responsible bidder at the prices named in the bid and shall reject all proposals or bids other than the lowest regular proposal or bid of a responsible bidder.

(2) The council may reject any proposals or bids if it considers this for the public good and may also reject the bid of a party who has been delinquent or unfaithful in a former contract with the municipality.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 543, Ch. 61, L. 2007.

Cross-References

Rural special improvement district — award of contract, 7-12-2135.

7-12-4144. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the city council may, at any time within 2 years thereafter and whenever and as often as the council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided without further proceedings and thereafter proceed in the manner provided in 7-12-4141 through 7-12-4145.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

Cross-References

Rural special improvement district — all bids rejected or no bids, 7-12-2136.

7-12-4145. Procedure for dealing with bid securities. (1) If bids are rejected, the city council shall return to the proper parties the bid securities corresponding to the rejected bids.

(2) The bid securities accompanying the accepted proposals or bids must be held by the city clerk of the city until the contract for doing the work has been entered into, either by the lowest bidder or by the owners of over 75% of the frontage, at which time the bid security must be returned to the bidder.

(3) If the bidder fails, neglects, or refuses to enter into the contract to perform the work or improvements, then the bid securities accompanying the bid must be declared to be forfeited to the city and must be collected by the city and paid into the general fund.

History: **En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 34, Ch. 665, L. 1985; amd. Sec. 544, Ch. 61, L. 2007.**

Cross-References

Rural special improvement district — bid securities, 7-12-2137.

7-12-4146. Retroactive application of bid procedures. The provisions of 7-12-4141 through 7-12-4145 shall be applicable to all special improvement districts created within 1 year preceding March 16, 1931.

History: **En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).**

7-12-4147. Procedure for property owners to do improvement work. The owners of three-fourths of the frontage of lots and lands liable to be assessed or their agents, who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids but may, within 3 days after the award pursuant to 7-12-4143, elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same has been awarded. All work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder.

History: **En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).**

7-12-4148. Contract with successful bidder. If the owners referred to in 7-12-4147 fail to elect to take the work, to enter into a written contract for the work within 3 days, or to commence the work within 15 days after the date of the written contract and to prosecute the contract with diligence to completion, the city council shall enter into a contract with the original bidder to whom the contract was awarded at the prices specified in the bid.

History: **En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part); amd. Sec. 545, Ch. 61, L. 2007.**

7-12-4149. Procedure if successful bidder does not enter into contract. (1) If the original bidder neglects, fails, or refuses for 15 days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance and award the contract for said work to the then-lowest regular bidder.

(2) Should no bids be received in response to the call for proposals, the council may again advertise for bids under the same proceedings at any time within 6 months from the time set for the last reception of bids and let the contract to the then-lowest bidder. Such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder.

History: **En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).**

7-12-4150. Effect of failure to enter contract. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract shall be rejected in any bidding or election subsequent to the first for the same work.

History: **En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).**

7-12-4151. Contractor's bond for successful completion of work. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council in the form and manner provided for in Title 18, chapter 2, part 2.

History: **En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R.C.M. 1921; re-en. Sec. 5236, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1975; R.C.M. 1947, 11-2213.**

Cross-References

Rural special improvement district — contractor's bond, 7-12-2138.

7-12-4152. Procedure if person entering contract defaults on work. (1) If the contractor or owner who may have taken a contract does not complete the contract within the time limited in the contract or within a further time that the city council may give, the city engineer shall report the delinquency to the council.

(2) (a) The council may relet the unfinished portion of the work after pursuing the formalities prescribed in 7-12-4141 through 7-12-4145 for the letting of the contract in the first instance.

(b) The city may, at its option, complete the contract and deduct any cost in excess of the contract price from any money, bonds, or warrants due the contractor or owners. If there is no money, bonds, or warrants due the contractor or owners from which to deduct the cost, then the city may sue the contractor or owners and recover the cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec. 5235, R.C.M. 1921; re-en. Sec. 5235, R.C.M. 1935; R.C.M. 1947, 11-2212; amd. Sec. 546, Ch. 61, L. 2007.

Cross-References

Rural special improvement district — default on work, 7-12-2139.

7-12-4153. Purchase of existing improvement. If the proposed improvement consists of the purchase of an existing improvement, the city council may, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of the improvement, upon such terms as it considers just, without advertising for bids or proposals. However, the total purchase price of the existing improvement may not exceed the amount set forth in the notice required by 7-12-4106.

History: En. Sec. 35, Ch. 665, L. 1985.

7-12-4154 through 7-12-4160 reserved.

7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165 for each improvement to be made or acquired for the benefit of the district.

(2) The city council may use one or any combination of methods of assessment in a single special improvement district, and if more than one improvement is undertaken, each lot or parcel of land in the district need not be assessed for the cost of all the improvements.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 36, Ch. 665, L. 1985.

7-12-4162. Assessment of costs — area option — assessed valuation option — equal amount option. (1) (a) The city council or commission shall assess the entire cost of an improvement against benefited property in the district, each lot or parcel of land assessed within such district to be assessed for that part of the whole cost which its assessable area bears to the assessable area of all benefited lots or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection, "assessable area" means an area of a lot or parcel of land representing the benefit conferred on the lot or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot or parcel.

(b) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

(c) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other benefited land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other benefited land within the district shall bear.

(2) The city council or city commission may assess the cost of an improvement against each lot or parcel of land in the district based on the assessed value of the benefited lots or parcels of

land within the district if the council or commission determines such assessment to be equitable and in proportion to and not exceeding the benefits derived from the improvement by the lot or parcel.

(3) The city council or city commission may assess each lot or parcel of land in the district an equal amount based upon the total cost of the improvement.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(a); amd. Sec. 37, Ch. 665, L. 1985; (2)En. Sec. 5, Ch. 631, L. 1987; amd. Sec. 2, Ch. 269, L. 1993.

Cross-References

Rural special improvement district — assessment of costs, 7-12-2151.

7-12-4163. Assessment of costs — frontage option. (1) The city council or commission shall assess the cost of an improvement against benefited lots or parcels in the district, each lot or parcel of land within such district bordering or abutting upon a street or streets whereon or wherein the improvement has been made to be assessed in proportion to the lineal feet abutting or bordering the same.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 38, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — assessment of costs, 7-12-2151.

7-12-4164. Assessment of costs — utility service connections — option. The city council or commission may assess utility service connections upon a lump sum based on the bid price in the improvement district contract and assess only the lots, tracts, or parcels of land served by the utility connection or connections within the special improvement district, so long as such assessment is equitable.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(c); amd. Sec. 39, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — assessment of costs, 7-12-2151.

7-12-4165. Assessment of costs — offstreet parking option. (1) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this section, the city council or commission shall assess, against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved in proportion to the benefits received by each benefited tract of land within said district.

(2) In determining the benefit to be received by each parcel of land, the council or commission shall consider:

(a) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(b) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(c) the assessed value of each parcel within said district;

(d) the square footage of each parcel within said district as it relates to the whole;

(e) the square footage of floorspace in any improvements on the parcel and the various uses of such floorspace;

(f) the availability of existing onsite parking space on any parcel of land within the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 40, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — assessment of costs, 7-12-2151.

7-12-4166. Land fronting excepted work not subject to assessment. The lots or portions of lots fronting upon excepted work referred to in 7-12-4117, already done, shall not be included in the assessment for the class of work from which the exception is made, provided that this shall not be construed so as to affect the special provisions as to grading contained in 7-12-4167.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(4).

7-12-4167. Provision for grading street by owner of abutting property. (1) The owner or owners of the lots or land fronting upon a street, the width and grade of which have been established by the city council or commission, may, after obtaining permission from the city council or commission, perform, at the owner's expense, any grading upon the street, to its full width or to the centerline of the street and to its established grade. The owner may procure, at the owner's expense, a certificate from the city engineer setting forth the number of cubic yards of cutting and filling made by each owner in the grading and proportions performed by each owner and certifying that the work is done to establish the width and grade of the street or to the centerline of the street and may file the certificate with the city engineer. The engineer shall record the certificate in a properly indexed book kept for that purpose in the engineer's office.

(2) (a) If the council or commission orders the grading of the street or any portion of the street on which any grading, certified as provided in subsection (1), has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading. The owner and the owner's successors in interest are entitled to credit on the assessment upon the owner's lots and lands fronting on the street for the grading of the street to the amount of the cubic yards of cutting and filling set forth in the owner's certificate, at the prices named in the contract for the cutting and filling or, if the grade has been altered, only for so much of the certified work as would be required for grading to the altered grade. The owner is not entitled to credit in excess of the assessments for grading upon the lots and lands owned by the owner and proportionately assessed for the whole of the grading.

(b) The city clerk shall include in the assessment, for the whole of the grading upon the same grade, the number of cubic yards of cutting and filling set forth in all certificates recorded in the clerk's office, or for the whole of the grading to the altered grade, and so much of the certified work that would be required for grading and shall enter corresponding credits, deducting the credits as payments upon the amounts assessed against the lots and land owned, respectively, by the certified owners and their successors in interest. However, the clerk may not include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading that are made upon lots and lands fronting upon the street and belonging to certified owners or their successors in interest.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(4), (5); amd. Sec. 547, Ch. 61, L. 2007.

7-12-4168. Provision for work other than grading done by owner of property. Whenever an owner or owners of lots and lands fronting on a street have done or do any work, excepting grading, on the street in front of a block at the owner's expense and the city council or commission subsequently orders any work to be done of the same class in front of the same block, the work done at the expense of the owner or owners must be excepted from the order ordering work to be done, if the work done at the expense of the owner or owners is upon the official grade and in condition satisfactory to the city engineer at the time that the order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(6); amd. Sec. 548, Ch. 61, L. 2007.

7-12-4169. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) are considered a part of the cost of making the improvements within the special improvement district.

(2) If the bonds or warrants are secured by the revolving fund under 7-12-4225, the costs of any improvement must include an amount of at least 5% and not more than 10% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-4221.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.

(b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.

(e) Money in the district reserve account may be used to pay the final principal and interest payment on bonds or warrants.

(4) The establishment of a district reserve account does not preclude the city or town council from requiring additional security from owners of real property in the district.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part); amd. Sec. 1, Ch. 435, L. 1981; amd. Sec. 41, Ch. 665, L. 1985; amd. Sec. 8, Ch. 229, L. 1995; amd. Sec. 10, Ch. 459, L. 1997; amd. Sec. 5, Ch. 349, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 349 in (2) near middle after "amount" substituted "of at least 5% and not more than 10%" for "equal to 5%". Amendment effective April 24, 2009.

Cross-References

Rural special improvement district — incidental expenses, 7-12-2153.

7-12-4170. Payment of damages incurred as result of improvements. Whenever the owner or anyone interested in property situated within the special improvement district, after filing with the clerk a written notice claiming that the person's property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of an improvement in the special improvement district and if the resolution levying the assessment to defray the cost of making the improvement in the district is not passed and adopted by the city council, the amount to be recovered must be added to and constitute a part of the cost of making the improvement. However, if the resolution levying the assessment to defray the costs and expenses of making the improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in the district for the purpose of paying the amount awarded, and the supplemental resolution must be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvement.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R.C.M. 1921; re-en. Sec. 5243, R.C.M. 1935; R.C.M. 1947, 11-2225; amd. Sec. 9, Ch. 251, L. 1979; amd. Sec. 549, Ch. 61, L. 2007.

Cross-References

Rural special improvement district — damages, 7-12-2154.

7-12-4171. Treatment of corner lots for purposes of assessment. For the purposes of special assessments levied against property as provided in this part through part 45, when assessments for improvements on both sides of a corner lot are determined in proportion to the lineal footage, the frontage of a corner lot in a platted block is the average of the two abutting sides.

History: En. 11-2289 by Sec. 1, Ch. 404, L. 1977; R.C.M. 1947, 11-2289.

Cross-References

Rural special improvement district — corner lots and inside lots, 7-12-2155.

7-12-4172. Allocation of costs of nonfrontage sides. The governing body shall allocate to all lots in the special improvement district a proportionate share of the costs according to the lineal feet assigned to each lot.

History: **En. 11-2290 by Sec. 2, Ch. 404, L. 1977; R.C.M. 1947, 11-2290.**

7-12-4173. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

History: **En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(3).**

Cross-References

Rural special improvement district — federal property, 7-12-2157.

7-12-4174. Inclusion and assessment of unplatted, undedicated, or unsurveyed land in improvement district — inclusion of condominium property. (1) Whenever an unplatted, undedicated, or unsurveyed lot, piece, or parcel of land that separates one platted part of the city from another platted part of the city, lying wholly within the boundaries of any city or town and except land owned by the United States, abuts or borders upon any special improvement district or is included within the boundaries of any special improvement district of a city or town, the city or town council may include the land within a special improvement district in the same manner as other property is included within the special improvement district. The special improvement district may assess the included land for its proportionate share of the cost of making or maintaining those improvements in the same manner as other property within the special improvement district.

(2) For assessment purposes, whenever property created as a condominium is included within the boundaries of any special improvement district, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

History: **En. Sec. 1, Ch. 16, L. 1923; re-en. Sec. 5238.1, R.C.M. 1935; R.C.M. 1947, 11-2215; amd. Sec. 14, Ch. 277, L. 2003.**

7-12-4175. Offstreet parking option — ordinance setting forth method of assessment required — hearing. (1) Before any improvement district for the establishment or improvement of offstreet parking can be created or financed under 7-12-4165, the city council or commission must, prior to the creation of the district, pass a city ordinance setting forth the formula to be used in determining the assessment of each lot or parcel within the district. The formula must include but is not limited to the items to be considered in 7-12-4165.

(2) Prior to the adoption of any such ordinance, the council or commission shall make a determination of the formula for the method of assessment, considering all of the factors above set forth. A public hearing, after due notice, shall be held wherein concerned persons may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time.

(3) After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

History: **En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 34, Ch. 575, L. 1981.**

7-12-4176. Resolution for tax levy upon district property. (1) To defray the cost of making or acquiring improvements in any special improvement district or of acquiring property for opening, widening, or extending any street or alley or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all benefited property in any district created for such purpose, using for a basis for assessment the method or methods set forth in 7-12-4161 through 7-12-4165 and described in the resolution of intention.

(2) Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, the amount of each partial payment to be made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk.

History: (1), (2)En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; Sec. 11-2222, R.C.M. 1947; (3)En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; Sec. 11-2223, R.C.M. 1947; R.C.M. 1947, 11-2222(part), 11-2223(part); amd. Sec. 42, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — resolution for levy and assessment of tax, 7-12-2158.

7-12-4177. Notice of resolution for tax levy — protest and hearing. (1) A notice signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of the improvements is on file in the city clerk's office and subject to inspection, must be:

(a) published as provided in 7-1-4127;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed. The lands must be identified and the mailing address determined from the last-completed assessment roll for state, county, and school district taxes.

(c) mailed to all other persons known to the clerk to have an ownership interest in the property.

(2) The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the council. The time for the hearing may not be less than 10 days after the final publication and mailing of the notice.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part); amd. Sec. 43, Ch. 665, L. 1985; amd. Sec. 23, Ch. 354, L. 2001.

Cross-References

Rural special improvement district — notice, 7-12-2159.

7-12-4178. Hearing on resolution for tax levy. (1) At the time so fixed, the council shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The council may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within 2 days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part).

7-12-4179. Payment of maintenance costs — resolution for assessment. (1) The cost of maintaining each of the improvements shall be paid by assessing the benefited properties of the district under a permissible assessment option as provided in 7-12-4162 through 7-12-4165.

(2) It is the duty of the council to estimate, as nearly as practicable, the cost of maintaining the improvements in each district for the season. Before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining the improvements within the several districts.

(3) The resolution levying assessments to defray the cost of maintenance of the improvement shall be prepared and certified in the same manner as a resolution levying assessments for making improvements in the special improvement district.

(4) The council may change by resolution, not more than once a year, the boundaries of any maintenance district, but the change of boundaries may not affect indebtedness existing at the time of the change.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part); amd. Sec. 10, Ch. 251, L. 1979; amd. Sec. 44, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — maintenance costs, 7-12-2161.

7-12-4180. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-4179 shall be paid into a fund known as special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).

Cross-References

Rural special improvement district — maintenance fund, 7-12-2162.

7-12-4181. Collection of district assessments by county clerk — certification. (1) Except as provided in 7-12-4183, in each city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer immediately after the second Monday of August of each year, it is the duty of the city treasurer or town clerk to certify to the department of revenue, at the same time that the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk, all special assessments and taxes levied and assessed in accordance with any of the provisions of part 42 and this part.

(2) The department of revenue shall enter the special assessments and taxes upon the property tax record for the county. The county treasurer shall collect all taxes and assessments in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1945; R.C.M. 1947, 11-2233; amd. Sec. 14, Ch. 27, Sp. L. November 1993; amd. Sec. 56, Ch. 278, L. 2001.

Cross-References

Rural special improvement district — collection of assessments, 7-12-2163.

7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies. (1) In each city or town that provides by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of part 42 and this part in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent. The city or town may, pursuant to 7-12-4184, order that all assessments that are delinquent for specific parcels of land as a result of acceleration be withdrawn.

(b) Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.1, R.C.M. 1935; R.C.M. 1947, 11-2234; amd. Sec. 3, Ch. 617, L. 1987; amd. Sec. 6, Ch. 449, L. 1989; amd. Sec. 550, Ch. 61, L. 2007.

7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes. (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4423, the city or town may provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of part 42 and this part in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments must, at the option of the city or town

council and by appropriate resolution duly adopted, become delinquent. The city or town council may order that all assessments that are delinquent as a result of acceleration be withdrawn.

(b) Delinquent special assessments must be certified to the county clerk of the county in which the city or town is situated. The county treasurer shall collect the delinquent special assessments and taxes in the same manner and at the same time that taxes for general, municipal, and administrative purposes are collected. In case the delinquent assessments and taxes are not paid, the whole property must be sold in the same manner that other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Subd. (c), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.2, R.C.M. 1935; R.C.M. 1947, 11-2235; amd. Sec. 4, Ch. 617, L. 1987; amd. Sec. 7, Ch. 449, L. 1989; amd. Sec. 57, Ch. 278, L. 2001.

7-12-4184. Reinstatement of delinquent assessment. (1) Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as provided in this part, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from the county treasurer's records and proceedings, and reinstated in the office of the city treasurer and on the property tax record upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to the payment, withdrawal, and reinstatement, filed with the county treasurer, is authority for the county treasurer to cancel and withdraw the delinquent special assessment or installment.

(3) The withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before a tax deed is executed.

History: En. Subd. (e), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.4, R.C.M. 1935; R.C.M. 1947, 11-2237; amd. Sec. 11, Ch. 251, L. 1979; amd. Sec. 15, Ch. 27, Sp. L. November 1993.

7-12-4185. Payment of tax under protest — action to recover. (1) When a tax levied and assessed under any of the provisions of part 42 and this part is considered unlawful by the party whose property is taxed or from whom the tax is demanded, the person may pay the tax or any part of the tax considered unlawful under protest to the city or county treasurer.

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the tax was paid or against the city in whose behalf the tax was collected to recover the tax or any portion of the tax paid under protest. An action instituted to recover the tax paid under protest must be commenced within 60 days after the date of payment.

(3) The tax paid under protest must be held by the city or county treasurer until the determination of an action brought for the recovery of the tax.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R.C.M. 1921; re-en. Sec. 5253, R.C.M. 1935; R.C.M. 1947, 11-2239; amd. Sec. 551, Ch. 61, L. 2007.

Cross-References

Rural special improvement district — payment of tax under protest, 7-12-2164.

Taxation — protest payments, Title 15, ch. 1, part 4.

7-12-4186. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to any law or ordinance or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto. The council may reassess and relevy the same with the same force and effect as an original levy.

(2) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper or the assessment may be reduced even to the extent of refunding the tax collected.

(3) Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced. Any provisions of any

law or ordinance specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this part or part 42.

History: En. Sec. 28, Ch. 89, L. 1913; re-en. Sec. 5252, R.C.M. 1921; re-en. Sec. 5252, R.C.M. 1935; R.C.M. 1947, 11-2238(part).

Cross-References

Rural special improvement district — procedure to correct assessment, 7-12-2165.

7-12-4187. Certain errors not to invalidate assessments and liens. (1) When, under any of the provisions of this part or part 42, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this part or part 42 unless it is impossible to identify the property from the description.

History: (1)En. Sec. 24, Ch. 89,L. 1913; re-en. Sec. 5248, R.C.M. 1921; re-en. Sec. 5248, R.C.M. 1935; Sec. 11-2230, R.C.M. 1947; (2)En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R.C.M. 1921; re-en. Sec. 5254, R.C.M. 1935; Sec. 11-2240, R.C.M. 1947; R.C.M. 1947, 11-2230, 11-2240.

Cross-References

Rural special improvement district — errors, 7-12-2166.

7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable in installments as follows:

(a) one-half of the payment on or before 5 p.m. on November 30 of each year; and

(b) one-half of the payment on or before 5 p.m. on May 31 of the following year.

(2) In the event the same are not paid on or before said dates, the same shall be subject to the same interest and penalties for nonpayment as delinquent property taxes under 15-16-102.

History: En. Subd. (d), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.3, R.C.M. 1935; R.C.M. 1947, 11-2236; amd. Sec. 1, Ch. 165, L. 1979; amd. Sec. 1, Ch. 527, L. 1981; amd. Sec. 45, Ch. 665, L. 1985.

7-12-4189. Simple interest on assessments. (1) Except as provided in subsection (3), simple interest must be charged on all special assessments and taxes levied and assessed in accordance with any of the provisions of this part. The simple interest must be charged at an annual rate equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the special improvement district at the time the assessment is levied each fiscal year; plus

(c) at the option of the city or town council, up to an additional 1/2 of 1% a year.

(2) The city or town council may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

(3) If and so long as the bonds or warrants secured by the assessments bear interest at a variable rate, the installments of assessments remaining unpaid must bear simple interest at an annual rate equal to the sum of:

(a) 1% a year; plus

(b) the interest rate payable on the outstanding bonds or warrants of the rural special improvement district at the time the assessment is levied each fiscal year; plus

(c) to the extent that the interest rate on the bonds or warrants is then less than the maximum rate prescribed for the bonds or warrants or if there is no prescribed maximum rate, up to an additional 1% a year, as may be prescribed by the board of county commissioners in the resolution authorizing the issuance or sale of the bonds or warrants.

(4) The treasurer, in collecting the special assessment taxes if the taxes are payable in one installment, shall collect the interest shown to be due on the taxes by the resolution levying the assessment. If the assessment is payable in installments, the treasurer shall, at the time of collecting the first installment, collect the interest shown to be due on the assessment by the resolution levying the assessment, and the treasurer shall collect with each subsequent installment interest on the amount remaining unpaid.

History: **En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R.C.M. 1921; re-en. Sec. 5245, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971; R.C.M. 1947, 11-2227; amd. Sec. 46, Ch. 665, L. 1985; amd. Sec. 9, Ch. 229, L. 1995; amd. Sec. 6, Ch. 162, L. 2001.**

7-12-4190. Payment of assessments in installments. (1) The payment of assessments to defray the cost of acquiring or constructing any improvements in special improvement districts may be spread over a term of not to exceed 20 years.

(2) The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the city council or commission so prescribes in the resolution authorizing the issuance of special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(3) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable.

History: **En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; R.C.M. 1947, 11-2222(part); amd. Sec. 47, Ch. 665, L. 1985; amd. Sec. 3, Ch. 631, L. 1987.**

Cross-References

Rural special improvement district — term of payment, 7-12-2167.

7-12-4191. Assessments and certain other charges as liens. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: **En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R.C.M. 1921; re-en. Sec. 5247, R.C.M. 1935; R.C.M. 1947, 11-2229.**

Cross-References

Rural special improvement district — liens, 7-12-2168.

7-12-4192. Change in outstanding principal of district — relevy of assessments. If proceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of the bonds or warrants, as provided in 7-12-4205 and 7-12-4206, or if refunding bonds are issued pursuant to 7-12-4194 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of the prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued. The city council shall reassess and relevy the assessments, with the same effect as an original levy, in reduced or increased amounts in accordance with the provisions of 7-12-4176 through 7-12-4178.

History: **En. Sec. 48, Ch. 665, L. 1985; amd. Sec. 8, Ch. 449, L. 1989.**

7-12-4193. Pooling of bonds of districts in city. (1) If the city council determines by resolution that the pooling of bonds of more than one special improvement district of the city is in the best interest of the city and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the city may issue bonds of the districts combined in a single offering. Such bonds must be secured by the special improvement district revolving fund of the city.

(2) The title of the bonds issued pursuant to this section shall denote that bonds of different special improvement districts have been pooled and shall refer to the numbers of the districts. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which accounts must be payable the assessments levied in each of the districts.

History: **En. Sec. 53, Ch. 665, L. 1985.**

7-12-4194. Refunding bonds. (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) (i) the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded;

(ii) the refunding bonds are to bear interest at a variable rate and the city council determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or

(iii) the bonds to be refunded bear interest at a variable rate and the council determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the city or the council determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;

(b) there is or will be on the next payment date default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable that will not be satisfied by a loan from the revolving fund; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

History: En. Sec. 56, Ch. 665, L. 1985; amd. Sec. 4, Ch. 631, L. 1987; amd. Sec. 9, Ch. 449, L. 1989; amd. Sec. 7, Ch. 162, L. 2001; amd. Sec. 13, Ch. 451, L. 2005.

7-12-4195. Pooling of special improvement district bonds and sidewalk, curb, gutter, or alley approach bonds. (1) If the city council determines by resolution that the pooling of bonds of one or more special improvement districts of the city with bonds issued to finance sidewalks, curbs, gutters, or alley approaches under 7-14-4109 will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the city may issue bonds of the district or districts and those sidewalk, curb, gutter, or alley approach bonds combined in a single offering. These bonds must be secured by the special improvement district revolving fund of the city.

(2) The title of the bonds issued pursuant to this section must denote that bonds have been pooled and must refer to the numbers of the district or districts and the additional improvements to be financed. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district and a separate account for those additional improvements combined for financing purposes, into which accounts must be payable the assessments levied in each of the districts or in respect of those improvements.

History: En. Sec. 22, Ch. 451, L. 2005.

7-12-4196 and 7-12-4197 reserved.

7-12-4198. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: En. Sec. 12, Ch. 162, L. 2005.

Part 42
Special Improvement Districts Continued

7-12-4201. Use of bonds and warrants. All costs and expenses incurred in the acquisition or construction of any improvements specified in part 41 in any improvement district or incurred in the issuance of the bonds or warrants of the district, including incidental expenses, shall be paid for by special improvement district bonds or warrants. The city or town council shall provide for making payments for improvements in any special improvement district by the method provided in 7-12-4204 and 7-12-4205.

History: Ap. p. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; Sec. 11-2231, R.C.M. 1947; Ap. p. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; Sec. 11-2232, R.C.M. 1947; R.C.M. 1947, 11-2231(part), 11-2232(part); amd. Sec. 49, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — use of bonds and warrants, 7-12-2169.

7-12-4202. Repealed. Sec. 16, Ch. 449, L. 1989.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 3, Ch. 165, L. 1979; amd. Sec. 4, Ch. 308, L. 1981; amd. Sec. 2, Ch. 527, L. 1981.

7-12-4203. Details relating to special improvement district bonds and warrants. (1) (a) The bonds and warrants must be drawn against the special improvement district fund created for the district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the governing body of the municipality. The terms determined by the governing body of the municipality may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the governing body of the municipality obtains separate written opinions from underwriters of Montana special improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates that the governing body prescribes. The warrants or bonds must bear the signatures of the mayor and clerk and may bear the corporate seal of the city. The warrants or bonds must be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they must also be registered and bear the signatures of the mayor and clerk.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date that the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 4, Ch. 165, L. 1979; amd. Sec. 3, Ch. 527, L. 1981; amd. Sec. 50, Ch. 665, L. 1985; (4)En. Sec. 51, Ch. 665, L. 1985; amd. Sec. 6, Ch. 256, L. 1989; amd. Sec. 10, Ch. 449, L. 1989; amd. Sec. 11, Ch. 459, L. 1997; amd. Sec. 8, Ch. 162, L. 2001; amd. Sec. 15, Ch. 277, L. 2003.

Cross-References

Rural special improvement district — definitions of bond forms, 7-12-2171.

7-12-4204. Procedure to issue bonds and warrants. (1) Subject to subsection (2), the city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against benefited property within the district, to the highest and best bidder for cash at a price, including interest to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount less than face value if it determines that the sale is in the best interests of the district and the city.

(2) (a) Subject to subsection (2)(b), the bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.

(b) Bonds in amounts up to $1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable and not in conflict with the provisions of 7-12-4205 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling the bonds or warrants.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part); amd. Sec. 52, Ch. 665, L. 1985; amd. Sec. 4, Ch. 6, L. 1993; amd. Sec. 2, Ch. 287, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 287 in (1) at beginning of first sentence inserted "Subject to subsection (2)"; in (2)(a) at beginning inserted "Subject to subsection (2)(b)"; inserted (2)(b) allowing the sale of certain bonds to Montana financial institutions through private negotiated sale; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Rural special improvement district — procedure to issue bonds and warrants, 7-12-2172.

7-12-4205. Disposition of bond or warrant proceeds. (1) The city or town council shall use the proceeds of such sale in making payment for the cost of the improvements. Payments to contractors may be made either from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

(2) During the construction of the improvements, all interest earned on the investment of bond or warrant proceeds must be credited to the construction account of the improvement district fund from which the proceeds were withdrawn.

(3) Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part); amd. Sec. 4, Ch. 382, L. 1983; amd. Sec. 54, Ch. 665, L. 1985.

Cross-References

Rural special improvement district — disposition of proceeds, 7-12-2173.

7-12-4206. Redemption of bonds and warrants. (1) Special improvement district warrants or bonds must be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-4205, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants may be otherwise subject to redemption and prepayment at the option of the city, as provided in the resolution authorizing the issuance of the bonds.

(2) The date of redemption must be fixed by the treasurer and may not be less than 30 days after the date of publication or mailing of the notice, and on the date fixed, interest ceases. The treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the treasurer shall publish notice of redemption once in a newspaper published in the city.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 12, Ch. 251, L. 1979; amd. Sec. 55, Ch. 665, L. 1985; amd. Sec. 38, Ch. 423, L. 1995.

Cross-References

Rural special improvement district — redemption, 7-12-2174.

7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on deposits or investments must be credited to the sinking fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part); amd. Sec. 3, Ch. 382, L. 1983; amd. Sec. 9, Ch. 421, L. 1985; amd. Sec. 14, Ch. 10, L. 1993.

Cross-References

Rural special improvement district — investment of maintenance, interest, and sinking fund money, 7-12-2175.

7-12-4208 through 7-12-4220 reserved.

7-12-4221. Creation of special improvement district revolving fund. The council or commission of any city or town which has heretofore created or may hereafter create any special improvement district or districts for any purpose may in its discretion create, establish, and maintain by ordinance a fund to be known and designated as the special improvement district revolving fund in order to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due. Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and interest thereon have been fully paid and discharged.

History: En. Sec. 1, Ch. 24, L. 1929; re-en. Sec. 5277.1, R.C.M. 1935; amd. Sec. 1, Ch. 255, L. 1971; R.C.M. 1947, 11-2269; amd. Sec. 6, Ch. 422, L. 1983.

Cross-References

Rural special improvement district — revolving fund, 7-12-2181.

7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the city or town council:

(a) may, from time to time, transfer to the revolving fund from the general fund of the city or town an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.

(b) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225, include in the cost of the improvement to be paid from the proceeds of the bonds or warrants an amount of at least 5% and not more than 10% of the principal amount of the bonds or warrants as provided in 7-12-4169; and

(c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the city or town as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund will exceed 10% or, with the amount levied by the tax, will exceed 10% of the principal amount of the then-outstanding special improvement district bonds and warrants secured by the revolving fund after all required transfers have been made to the district funds through fiscal yearend.

(2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-4223 must, by order of the council, be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in the district fund must, by order of the council, be transferred to and become part of the revolving fund.

History: En. Secs. 2, 4, Ch. 24, L. 1929; re-en. Secs. 5277.2, 5277.4, R.C.M. 1935; amd. Secs. 2, 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2270, 11-2272(part); amd. Sec. 5, Ch. 308, L. 1981; amd. Sec. 2, Ch. 435, L. 1981; amd. Sec. 7, Ch. 422, L. 1983; amd. Sec. 10, Ch. 229, L. 1995; amd. Sec. 6, Ch. 349, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 349 in (1)(b) near end after "amount" substituted "of at least 5% and not more than 10%" for "equal to 5%"; in (1)(c) in second sentence after "fund" substituted "will exceed 10% or, with the amount levied by the tax, will exceed 10%" for "exceeds 5%", at end of sentence inserted "after all required transfers have been made to the district funds through fiscal yearend", and deleted former third sentence that read: "If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Rural special improvement district — sources of money, 7-12-2182.

7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. During the period described in 7-12-4225(2), when any special improvement district bond or sidewalk, curb, and alley approach warrants that are secured by the revolving fund or any interest on the bond or warrants becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned or from the money loaned and money available in the district fund. The loan must be made even if, in the case of bonds or warrants bearing interest at a variable rate, the interest rate on the special assessments at the time the loan is made is less than or later becomes less than the interest rate on the bonds or warrants.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(1); amd. Sec. 8, Ch. 422, L. 1983; amd. Sec. 11, Ch. 229, L. 1995; amd. Sec. 9, Ch. 162, L. 2001.

Cross-References

Rural special improvement district — loans from revolving fund, 7-12-2183.

7-12-4224. Lien arising due to loan from revolving fund. Whenever any loan is made to any special improvement district fund or sidewalk, curb, and alley approach warrants from the revolving fund, the revolving fund has a lien for the amount of the loan on all unpaid assessments and installments of assessments on the district, whether delinquent or not. The lien also applies to all money coming into the district fund up to the amount of the loan, together with interest on the loan from the time it was made, at the interest rate that is borne by the bond or warrant for which the loan was made and that was determined at the time the loan was made, even if the interest rate on the bond or warrant subsequently changes.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part); amd. Sec. 10, Ch. 162, L. 2001.

Cross-References

Rural special improvement district — liens, 7-12-2184.

7-12-4225. Covenants to use revolving fund — duration of revolving fund obligation — factors to be considered. (1) In connection with the issuance of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available;

(b) to provide funds for the revolving fund pursuant to the provisions of 7-12-4222(1) by annually making a tax levy or, in lieu of the tax levy, a loan from the general fund, subject to the maximum limitations imposed by 7-12-4222(1); and

(c) to retain in the revolving fund a balance of up to 10% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund.

(2) The undertakings and agreements referred to in subsection (1) are binding upon the city or town with respect to the special improvement district bonds or sidewalk, curb, and alley approach warrants until the earlier of:

(a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or

(b) the date that is the later of:

(i) the final stated maturity date of the bonds or warrants; or

(ii) the date on which all special assessments levied in the district have been either paid or discharged.

(3) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to have occurred upon:

(a) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law;

(b) the discharge of the trust pursuant to 15-17-318 or upon the sale or lease of the property under 15-17-319 if the property in the district has been assigned to the city or town under Title 15, chapter 17, part 3; or

(c) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(4) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or town council shall take into consideration the following factors, including other circumstances that the city or town council may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(5) Any findings or determinations with respect to the factors contained in subsection (4) made by the city or town council in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (4).

(6) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(2); amd. Sec. 9, Ch. 422, L. 1983; amd. Sec. 12, Ch. 229, L. 1995; amd. Sec. 7, Ch. 349, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 349 inserted (1)(c) concerning retaining balance of up to 10% in revolving fund; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Rural special improvement district — covenants to use and duration of revolving fund, 7-12-2185.

7-12-4226. Investment of surplus reserves. Surplus reserves not needed for immediate use may from time to time be invested in securities of the United States or certificates of deposit approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of 10% of the outstanding special improvement district bonds and warrants secured by the revolving fund and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured by the revolving fund or interest on the revolving fund, the council may order that any part of the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured by the revolving fund or interest on the revolving fund to be:

(1) transferred to the general fund of the city or town;

(2) used for the purchase of property at sales for delinquent taxes, assessments, or both; or

(3) used for the purchase of property that may have been struck off or sold to the county for delinquent taxes, assessments, or both and against which there is an unpaid assessment for special improvements and there are outstanding special improvement district bonds or warrants of the city or town.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part); amd. Sec. 6, Ch. 308, L. 1981; amd. Sec. 3, Ch. 435, L. 1981; amd. Sec. 10, Ch. 422, L. 1983; amd. Sec. 8, Ch. 349, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 349 in introductory clause after "excess of" substituted "10%" for "5%", after "warrants" inserted "secured by the revolving fund", and after "council may" deleted "by vote of all of its members at a meeting called for that purpose"; in (2) at beginning substituted "used" for "use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or interest thereon or any part thereof"; in (3) at beginning inserted "used for the purchase of" and after "improvements" deleted "on account whereof"; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Rural special improvement district — use of excess money, 7-12-2186.

7-12-4228. Disposition of tax certificates and tax lien sale property. (1) The council may sell any tax certificates issued on any sale or sales referred to in 7-12-4227(2). After acquiring title to property referred to in 7-12-4227, the city or town may lease such property, sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require.

(2) All proceeds from such sales of tax certificates and from such leasing, sale, or other disposition of the property shall belong to and be paid into the revolving fund and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose as hereinbefore provided.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part).

Cross-References

Tax sales, Title 15, ch. 17.

7-12-4229. Disposal of funds deposited in revolving fund. Any funds without interest deposited in the revolving fund under 7-12-4169(2) less the amount of any loan to the district fund not repaid may be returned to the owners of record of the property of the district in direct proportion of the original assessment on each piece of property, or as an alternative a municipality may transfer the funds placed in the revolving fund as a result of 7-12-4169(2) to the general fund after the final payment of the district's bonds or warrants is paid.

History: En. Sec. 4, Ch. 435, L. 1981.

7-12-4230 through 7-12-4240 reserved.

7-12-4241. Creation of supplemental revolving fund from parking meter revenue. Subject to the provisions of 7-12-4242, a city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of 7-12-4241 through 7-12-4258 for improvements undertaken pursuant to this part and part 41 for the following purposes: for paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading, or regrading one or more streets, alleys, avenues, or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley, or other public way.

History: En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).

7-12-4242. Application of provisions relating to supplemental revolving fund. The provisions of 7-12-4241 through 7-12-4258 shall not be applicable to any improvement unless the council shall find that 80% or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).

7-12-4243. Procedure to create and maintain supplemental revolving fund. (1) (a) A supplemental revolving fund may be created by ordinance, subject to the approval of a majority of the qualified electors voting upon the question at a general election or a special election held in conjunction with a regular or primary election.

(b) As used in 7-12-4241 through 7-12-4258, "qualified electors" means registered electors of the municipality.

(2) The supplemental revolving fund must be created and maintained solely from the net revenue of parking meters. The ordinance may pledge to the revolving fund all or any part of the net revenue of parking meters owned, leased, rented, or acquired by the city or town. The ordinance must contain any provisions concerning the purchase, control, operation, repair, and maintenance of parking meters, including rates to be charged, and the application of the net revenue from the meters and the management and use of the supplemental revolving fund that the council considers necessary.

History: **En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971; R.C.M. 1947, 11-2275; amd. Sec. 41, Ch. 387, L. 1995.**

7-12-4244. Issuance of bonds based upon supplemental revolving fund — election. (1) At any time after the award of the contract for any of the improvements described in 7-12-4241 and prior to the issuance of bonds or warrants under the provisions of 7-12-4201 and 7-12-4203, the council may by resolution determine that the improvement is of a character that bonds may be issued under 7-12-4241 through 7-12-4258 in lieu of bonds under 7-12-4201 and 7-12-4203, and may submit to the qualified electors of the city or town the question whether the bonds shall be issued.

(2) The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

History: **En. Sec. 3, Ch. 260, L. 1947; R.C.M. 1947, 11-2276; amd. Sec. 11, Ch. 449, L. 1989.**

7-12-4245. Resolution for issuance of bonds. (1) Whenever the council has been authorized to issue bonds under 7-12-4241 through 7-12-4258, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund.

(2) Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine.

(3) The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine.

History: **En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).**

7-12-4246. Determination of cost of improvements. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; cost of the parking meters; and interest which it is estimated will accrue during the construction period and for 6 months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued.

History: **En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).**

7-12-4247. Details relating to bonds. (1) The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for the improvement, or may mature in installments at various times during the term of the assessments, but the bonds may not mature later than 10 years from the date of issuance.

(2) The bonds, as the council shall determine, are subject to redemption prior to maturity and may be payable at any suitable bank or trust company either within or without the state of Montana.

(3) The bonds issued under 7-12-4241 through 7-12-4258 shall be in substantially the form provided in 7-12-4201 and 7-12-4203, as modified by the provisions of 7-12-4241 through 7-12-4258.

History: **En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part); amd. Sec. 12, Ch. 449, L. 1989.**

7-12-4248. Operation and use of supplemental revolving fund. (1) Money in the supplemental revolving fund shall first be loaned to the various district funds whose bonds are guaranteed under 7-12-4241 through 7-12-4258 to make up any deficiency in such funds.

(2) In event of any further deficiency in such funds, the money in the revolving fund created under 7-12-4221 through 7-12-4228 may be loaned to make good such deficiency pursuant to the provisions of those sections.

(3) In event that the deficit exceeds the money in the supplemental revolving fund, then the money in the revolving fund may be similarly loaned until the deficiency has been made good.

(4) The authorizing resolution may provide that bonds shall become due in accordance with a plan of redemption prior to the stated maturity date. Both revolving funds shall thereafter have concurrent liens on the unpaid assessments and the moneys in the improvement district fund for all such advances, provided that such advances shall not be returned so long as any principal or interest on bonds issued under 7-12-4241 through 7-12-4258 remains unpaid.

History: **En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).**

7-12-4249. Meaning of term deficiency. A deficiency shall exist in any district fund whenever principal and interest is due and there is no money in the fund to pay the same.

History: En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).

7-12-4250. Obligations of municipalities to bondholders. All agreements, conditions, covenants, or restrictions in the ordinance creating the supplemental revolving fund, in the resolution determining that the improvement is of a character for which bonds may be issued under 7-12-4241 through 7-12-4258, and in the resolution authorizing the issuance of bonds shall be binding upon the city or town and may not be thereafter altered or amended to the detriment of the rights of any bondholder so long as any of such bonds are outstanding.

History: En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).

7-12-4251. Enforcement of bondholders' rights. The provisions of 7-12-4241 through 7-12-4258 and the rights granted under any ordinance or resolution enacted pursuant to these sections may be enforced by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

History: En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).

7-12-4252. Judicial determination of validity of proceedings — petition. (1) Within 10 days after the adoption of the resolution providing for the issuance of bonds under 7-12-4241 through 7-12-4258, the council may file a petition in the district court of the judicial district wherein said city or town is located to determine the validity of the proceedings theretofore had relative to the issuance of said bonds, the creation of the supplemental revolving fund, and the levy of a special assessment.

(2) The petition shall set forth generally the facts in reference to the improvement, the creation of the supplemental revolving fund, and the issuance of bonds and shall have as exhibits thereto certified copies of the ordinances and resolutions and shall pray for confirmation of the proceedings and of the bond issue and the special assessments, if theretofore levied.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).

7-12-4253. Nature of court proceedings. The action provided for in 7-12-4252 shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as provided in 7-12-4254.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).

7-12-4254. Hearing on petition — notice. (1) Upon the filing of the petition, the district court or any district court judge shall fix the time for the hearing on the petition, which may not be less than 15 days from the date of filing the petition in the court.

(2) The district court or any district court judge shall order the clerk of the court to give notice of the filing of the petition as provided in 7-1-2121. The date of the first publication may not be less than 15 days prior to the date fixed for hearing.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 24, Ch. 354, L. 2001.

7-12-4255. Contents of notice of hearing — protest. (1) The notice must state the substance of the petition and the time and place for hearing and that any interested person or any person whose rights may be affected by the issuance or sale of the bonds or the levy of the special assessment, may, on or before the day fixed for the hearing on the petition, answer the petition and may appear at the hearing and contest the granting of the request of the petition and the entry of any order of confirmation pursuant to the petition.

(2) A person eligible to appear may enter an appearance in the proceedings and answer the petition and contest the granting of the request of the petition, and all provisions of the code of civil procedure are applicable to the proceedings.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 13, Ch. 251, L. 1979; amd. Sec. 552, Ch. 61, L. 2007.

7-12-4256. Decision of district court. (1) If upon the hearing the court shall find and determine that the requirements of 7-12-4241 through 7-12-4258 have been complied with and notice of the hearing duly given as required by law, it shall have power to examine and determine the regularity, legality, and validity of the proceedings relative to the issuance of the bonds and the levy of special assessments and the legality and validity of the bonds and the special assessment and may ratify, approve, and confirm the proceedings in whole or in part and enter its judgment or decree accordingly.

(2) If no appeal pursuant to 7-12-4257 is taken within the time provided for in 7-12-4257 or if the judgment or decree of the district court be affirmed upon such appeal, such judgment or decree shall be forever conclusive upon all the world as to the validity of the bonds and the special assessment, and the same shall never be called into question in any court of the state.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4257. Appeal from district court to supreme court. From any judgment or decree entered under 7-12-4256, an appeal may be taken to the supreme court at any time within 10 days from the entry of such judgment in the manner prescribed by the code of civil procedure governing appeals from the district court to the supreme court.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4258. Cost of court proceedings. The cost of the court proceedings may be apportioned between the parties at the discretion of the court.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 14, Ch. 251, L. 1979.**

Part 43

Special Provisions for Special Improvement Lighting Districts

7-12-4301. Special improvement districts for lighting streets authorized. (1) The council of any city or town is authorized to:

(a) create special improvement districts embracing any street or streets or public highway therein or portions thereof and property adjacent thereto or property which may be declared by said council to be benefited by the improvement to be made for the purpose of lighting such street or streets or public highway;

(b) require that all or any portion of the cost of installing and maintaining such lighting system be paid by the owners of the property embraced within the boundaries of such districts; and

(c) assess and collect such portion of such cost by special assessment against said property.

(2) The governing body may create special lighting districts on any street or streets or public highway for the purpose of lighting them and assess the costs for installation and maintenance to property abutting thereto and collect the costs by special assessment against the property.

History: **(1)En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1927; re-en. Sec. 5259, R.C.M. 1935; Sec. 11-2245, R.C.M. 1947; (2)En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; Sec. 11-2201, R.C.M. 1947; R.C.M. 1947, 11-2201(8), 11-2245; amd. Sec. 1, Ch. 521, L. 1981.**

Cross-References

Major modification of existing lighting district, 7-12-4351.

7-12-4302. Resolution of intention to create special improvement lighting district. (1) Before creating any special improvement lighting district in any such city or town for the purpose of lighting any street or streets or public highway or section thereof in accordance with the provisions of this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof, an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first year, and the proportion of such cost to be assessed against the property embraced within the district.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(1).**

7-12-4303. Notice of resolution of intent to create lighting district. (1) Upon having passed the resolution required by 7-12-4302, the council shall give notice of the passage of the resolution of intention. The notice of the passage of the resolution must be published as provided in 7-1-4127. A copy of the notice must be mailed to every person, firm, or corporation having property within the proposed district, as listed on the current property tax record, at the property owner's address as the address is listed on the current property tax record, on the same day that the notice is first published or posted.

(2) The notice must describe the general character of the improvement proposed to be made, state the estimated cost of the improvement and the estimated cost of maintaining the lights and supplying the electrical current for the improvement and lights within the district for the first year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of the improvement or the creation of the district. The notice must refer to the resolution on file in the office of the city clerk for a description of the boundaries.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(2); amd. Sec. 1, Ch. 127, L. 1997; amd. Sec. 25, Ch. 354, L. 2001.**

7-12-4304. Protest against creation of lighting district. At any time within 15 days after the date of the first publication of the notice of passage of the resolution of intention, an owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. The notice must be in writing and be delivered to the clerk of the city council, who shall endorse on the notice the date of receipt.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(3); amd. Sec. 553, Ch. 61, L. 2007.**

7-12-4305. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the time within which said protests may be made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. When the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the city clerk of said city council.

(2) In determining the sufficiency of protest, each protest shall be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.

(3) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district.

(4) The city council may adjourn said hearing from time to time.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(4), (5); amd. Sec. 2, Ch. 682, L. 1983.**

7-12-4306. Resolution to create lighting district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passage of the resolution of intention or when a protest shall have been found by the city council to be insufficient or shall have been overruled or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(6).**

7-12-4307. Objections to irregular proceedings or manner of making improvements. (1) At any time within 60 days from the date of the award of a contract by a city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting the streets of the city or town to be procured and erected, an owner or other person having an interest in a lot or land liable to assessment who claims that any of the previous acts or proceedings relating to the improvements are irregular, defective, erroneous, or faulty or that the person's property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect the acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent the person's property will be damaged by the making of the improvements. The city clerk shall deliver the notice to the council.

(2) All objections to an act or proceeding or in relation to the making of the improvements not made in writing and in the manner and at the time provided in subsection (1) and all claims for damage are waived by the property owners if the notice of the passage of the resolution of intention has been actually published and the notices of improvements have been posted as provided in this part.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R.C.M. 1921; re-en. Sec. 5262, R.C.M. 1935; R.C.M. 1947, 11-2248; amd. Sec. 554, Ch. 61, L. 2007.

7-12-4308. Operation of district. (1) The city or town council may:

(a) cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets to be procured and erected by contract, by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide; and

(b) after such lighting system has been installed in such way and manner as the council shall elect, cause, by contract, the lights to be maintained thereon and electrical current furnished therefor.

(2) The posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highway or section thereof to be lighted in any such district.

(3) The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect. The council shall not let a contract for a period to exceed 3 years.

History: (1), (2)En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; Sec. 11-2247, R.C.M. 1947; (3)En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; Sec. 11-2252, R.C.M. 1947; R.C.M. 1947, 11-2247(7), 11-2252(part).

7-12-4309. Record of expenses to be kept by city engineer. The city engineer shall keep an account of all costs and expenses incurred in the engineer's office in connection with each special improvement district and certify the costs and expenses to the city clerk.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part); amd. Sec. 555, Ch. 61, L. 2007.

7-12-4310. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4311. Termination of special improvement lighting district. If at any time after the creation of a special improvement lighting district a petition is presented to the city or town council, signed by the owners or agents of more than three-fourths of the total amount of property within the district, asking that the maintenance and operation of the special lighting system and the furnishing of electrical current in the district be discontinued, or if a majority of the city or town council votes to discontinue a special improvement lighting district, the city or town council shall, by resolution, provide for discontinuing the maintenance and operation of the lighting system. If the council has, prior to the presentation of a petition or by a majority vote of the council to discontinue the district, entered into any contract for the maintenance and operation of the lighting system, the maintenance and operation may not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R.C.M. 1921; amd. Sec. 5, Ch. 143, L. 1927; re-en. Sec. 5269, R.C.M. 1935; R.C.M. 1947, 11-2255; amd. Sec. 2, Ch. 127, L. 1997.

7-12-4312 through 7-12-4320 reserved.

7-12-4321. Apportionment of costs. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, all or any portion as shall be determined by the city or town council, shall be borne by the property embraced within said district.

History: **En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part); amd. Sec. 2, Ch. 521, L. 1981.**

7-12-4322. Choice in manner of making assessments. The city or town council, for the purpose of making the assessment, shall adopt one of the methods specified in 7-12-4323 or 7-12-4324.

History: **En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part).**

7-12-4323. Assessment of costs — area or taxable valuation option — equal assessment option. (1) The city council may assess the entire cost of the lighting improvement against the entire district, each lot or parcel of land within the district to be assessed for that part of the whole cost that its:

(a) area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; or

(b) taxable valuation, including improvements, bears to the taxable valuation of the entire district.

(2) The city council may assess the cost equally against each of the lots or parcels located within the district.

(3) The council, in its discretion, may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds available for that purpose or include the whole or any part of the costs within the amount of the assessment to be paid by the property in the district.

(4) In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of a block, the council may, in the resolution creating a district, provide that whenever any of the improvements provided in this part are located along a side street or bordering or abutting upon the side of a corner lot of a block, the amount of the assessment against the property in the district to defray the cost of the improvements must be assessed so that each square foot of the land embraced within the corner lot bears double the amount of the cost of the improvement that a square foot of an inside lot bears.

History: **En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(a); amd. Sec. 1, Ch. 682, L. 1983; amd. Sec. 2, Ch. 154, L. 2007.**

7-12-4324. Assessment of costs — frontage option. (1) The city council shall assess the cost of the improvements against the entire district, each lot or parcel of land within the district bordering or abutting upon the streets whereon or wherein the improvement has been made to bear costs in proportion to the lineal feet abutting or bordering the streets.

(2) The council, in its discretion, may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: **En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(b); amd. Sec. 15, Ch. 251, L. 1979.**

7-12-4325. Incidental expenses considered as costs of improvements. The cost and expense connected with and incidental to the formation of the district, including the cost of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection, including the compensation of the city engineer for work done; the cost of printing and advertising as provided in this part; and the preparation of assessment rolls must be considered a part of the cost and expenses of making the improvements within the special improvement district.

History: **En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part); amd. Sec. 556, Ch. 61, L. 2007.**

7-12-4326. Treatment of federal lands within lighting district. Whenever any lot, piece, or parcel of land belonging to the United States (or mandatory of the government) shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: **En. Sec. 12, Ch. 143, L. 1915; re-en. Sec. 5271, R.C.M. 1921; amd. Sec. 6, Ch. 143, L. 1927; re-en. Sec. 5271, R.C.M. 1935; R.C.M. 1947, 11-2257.**

7-12-4327. Assessment of costs of lighting district to certain lands lying outside of municipality. The city or town council may make assessments in the manner provided in 7-12-4301 on property abutting the street or highway and lying outside the boundaries of the city or town, as long as that portion of the street or public highway to be lighted is adjacent to the boundary line of the city or town, lies partially within the city or town, or extends from one point within the city or town to another point within the city or town.

History: **En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(9).**

7-12-4328. Resolution to provide for assessment of costs of installation. (1) It shall be the duty of the city or town council to ascertain the cost of installing such lighting system and, on or before the first Monday in October, to pass and finally adopt a resolution levying and assessing all of the property embraced within said district with all or any portion of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in 7-12-4321 through 7-12-4324.

(2) Any such resolution shall contain a list in which shall be described each lot or parcel of land, either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite.

(3) Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part); amd. Sec. 3, Ch. 521, L. 1981.**

7-12-4329. Notice of resolution for assessment of installation costs — hearing on resolution. (1) A notice, signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining the lights and supplying electrical current for the first year as determined by the city or town council is on file in the city clerk's office subject to inspection, must be published as provided in 7-1-4127.

(2) The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the council. The time for the hearing may not be less than 5 days after the final publication of the notice.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part); amd. Sec. 26, Ch. 354, L. 2001.**

7-12-4330. Hearing on resolution for assessment of installation costs. (1) At the time so fixed, the council shall meet and hear all such objections and for the purpose may adjourn from day to day and may modify such resolution in whole or in part.

(2) A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within 2 days after its passage to the city treasurer.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).**

7-12-4331. Lighting district fund established. All money derived from the collection of the assessments provided for in 7-12-4328 through 7-12-4330 shall constitute a fund to be known as the special improvement lighting district No. .... fund.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).**

7-12-4332. Resolution to provide for assessment of maintenance costs. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year and the portion thereof to be assessed against the property embraced within the district and, before the first Monday in October, to pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be especially assessed against said property.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4333. Procedure for resolution for assessment of maintenance costs. Said resolution levying and assessing said portion of the cost of maintenance and for furnishing electrical current therefor shall be prepared and certified to in the same manner as the resolution provided for in 7-12-4328 through 7-12-4330, and the same notice and hearing shall be given thereon. This resolution shall be adopted and certified and the assessment collected in the same manner, as nearly as may be, in the case of the resolution provided for in 7-12-4328 through 7-12-4331.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4334. Lighting district maintenance fund. All money derived from the collection of the assessment provided for in the resolution required by 7-12-4333 shall be paid into a fund known as the special improvement lighting district No. .... maintenance fund, the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of current for which the tax is levied. Such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district and for no other purpose.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4335. Change of boundaries of maintenance district. The city or town council shall have the power, not more than once in a year, to change by resolution the boundaries and number of any maintenance district, but such change of boundaries shall not affect indebtedness existing at the time of such change.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4336. Effect of mistake as to property ownership. When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R.C.M. 1921; re-en. Sec. 5267, R.C.M. 1935; R.C.M. 1947, 11-2253.

7-12-4337. Incorporation of procedures to correct errors and omissions. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this part which are for the correction of errors or omissions in the adoption of any resolution or proceeding or in the levy of any assessment or for the collection thereof, for the enforcement of any such levy by the sale of the property against which the assessment is made, or for the redemption of the property from such sale or which are otherwise applicable to the administration of this part are available in the administration of this part as if such remedies, provisions, and means were contained in this part.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R.C.M. 1921; re-en. Sec. 5268, R.C.M. 1935; R.C.M. 1947, 11-2254; amd. Sec. 16, Ch. 251, L. 1979.

7-12-4338. Assessments to have effect of lien. Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest, or otherwise as provided by law.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(3).

Cross-References

Liens, Title 71, ch. 3, part 1.

7-12-4339 and 7-12-4340 reserved.

7-12-4341. Financing of lighting district improvements. All costs and expenses incurred in the construction of the improvements specified in this part shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance, drawn against a fund to be known as the special improvement lighting district No. .... fund.

History: **En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).**

7-12-4342. Details relating to lighting district bonds and warrants. (1) Warrants or bonds issued pursuant to 7-12-4341 must be in the denomination of $100 or fractions or multiples of $100 and may be issued in installments.

(2) The warrants or bonds must be redeemed by the treasurer when there is money available for redemption in the fund against which the warrants or bonds are issued and must bear interest from the date of registration of the warrants or bonds until called for redemption or paid in full, interest to be payable annually on January 1 of each year as expressed by the interest coupon attached to the warrant or bond, which may bear the engraved facsimile signature of the mayor and city clerk.

(3) The warrants or bonds may extend over a period not to exceed 20 years.

(4) The requirements of 7-12-4341 and this section apply to all special improvement lighting districts, including those in the process of formation or to be formed on or after July 1, 1997.

History: **En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part); amd. Sec. 3, Ch. 127, L. 1997.**

7-12-4343 and 7-12-4344 reserved.

7-12-4345. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: **En. Sec. 1, Ch. 276, L. 1987.**

7-12-4346 through 7-12-4350 reserved.

7-12-4351. Major modification of existing lighting district. (1) The council of any city or town is authorized to:

(a) modify an existing special improvement lighting district by changing the number and spacing of lights, replacing overhead transmission lines with underground lines, increasing or decreasing the level of illumination, or making other major modifications required by the public interest and convenience;

(b) require that all or any part of the cost of the modification be paid by the owners of the property within the district; and

(c) assess and collect all or any part of the cost of the modification by special assessment against the property within the district.

(2) Before modifying an existing lighting district, the city council shall adopt a resolution of intention to do so, either by motion of the council or upon presentation of a petition signed by the owners or agents of at least 10% of the property within the district.

(3) The provisions in 7-12-4302 through 7-12-4305 for the content of the resolution, public notice, protest, and consideration of protest that apply to the creation of a special improvement lighting district also apply to the modification of an existing special improvement lighting district authorized by this section.

History: **En. Sec. 1, Ch. 46, L. 1987.**

7-12-4352. Jurisdiction to modify lighting district. If no protests have been delivered to the clerk of the city or town council within 15 days of the date of the first publication of the notice of the passage of the resolution of intention required by 7-12-4351 or if a protest has been found to be insufficient or has been overruled, the city or town council is considered to have acquired jurisdiction to order the proposed modification.

History: **En. Sec. 2, Ch. 46, L. 1987.**

7-12-4353. Objections to irregular proceedings or manner of making modification. (1) At any time within 60 days from the date of the award of a contract by a city or town council to implement the provisions of 7-12-4352 or at any time within 60 days from the date the council instructs an official of the city or town to cause the necessary equipment or appliances to be procured and installed, an owner of property liable to assessment who claims that any of the previous acts or proceedings relating to the modification are irregular, defective, erroneous, or faulty or that the person's property will be damaged by making the modification in the manner contemplated may file with the city or town clerk a notice specifying in what respect these acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent the person's property will be damaged by the modification.

(2) Objections to an act or proceeding or in relation to the making of the modification not made in writing or not made in the manner provided for in subsection (1) and all claims for damage are waived by the property owners if the notice of the passage of the resolution has been published and the notices of the modification have been posted as provided in 7-12-4303.

History: En. Sec. 3, Ch. 46, L. 1987; amd. Sec. 557, Ch. 61, L. 2007.

7-12-4354. Minor modifications exempt. Nothing in 7-12-4351 through 7-12-4354 prevents the city or town council from eliminating unnecessary lights, relocating individual lights, upgrading lights and lighting-related facilities in the interest of energy conservation, or making other minor modifications in a special improvement lighting district without following the procedures described in 7-12-4351 through 7-12-4353. For the purposes of this section, "minor modifications" includes but is not limited to adding properties or lights if the additions:

(1) reduce assessments within the maintenance district; or

(2) increase the average assessments within the maintenance district by 3% or less in a fiscal year.

History: En. Sec. 4, Ch. 46, L. 1987; amd. Sec. 4, Ch. 127, L. 1997.

Part 44
Special Provisions for Street Maintenance Districts

Part Cross-References

Maintenance of trafficways, 7-14-4107.

7-12-4401. Street maintenance district authorized — definition. (1) Whenever the council of a city or town desires to create a district for the maintenance of all or part of the streets or avenues of its city or town as provided in this part, it shall provide by ordinance a method of doing the maintenance and of paying for the maintenance under the restrictions and regulations provided in this part.

(2) "Maintenance" as used in this part includes but is not limited to sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, leaf and debris removal, the operation, maintenance, and repair of traffic signal systems, the repair of traffic signs, the placement and maintenance of pavement markings, curb and gutter repair, and minor sidewalk repair that includes cracking, chipping, sinking, and replacement of not more than 6 feet of sidewalk in any 100-foot portion of sidewalk.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907; re-en. Sec. 5272, R.C.M. 1921; amd. Sec. 1, Ch. 97, L. 1927; re-en. Sec. 5272, R.C.M. 1935; R.C.M. 1947, 11-2263; amd. Sec. 3, Ch. 212, L. 1983; amd. Sec. 1, Ch. 188, L. 1999; amd. Sec. 1, Ch. 231, L. 2005.

7-12-4402. Creation of maintenance districts. A resolution shall be adopted dividing the whole or any part of the city or town into maintenance districts, to be known and designated by number. Said resolution shall plainly define the boundaries of the district or districts and describe the streets, alleys, and public places or any part thereof constituting the district or districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907; re-en. Sec. 5273, R.C.M. 1921; re-en. Sec. 5273, R.C.M. 1935; R.C.M. 1947, 11-2264; amd. Sec. 4, Ch. 212, L. 1983.

7-12-4403. Alteration of maintenance districts. When once defined, maintenance districts may not be changed during the same calendar year but may be changed by resolution in any succeeding year.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R.C.M. 1921; re-en. Sec. 5274, R.C.M. 1935; R.C.M. 1947, 11-2265; amd. Sec. 5, Ch. 212, L. 1983.

7-12-4404. Manner of providing maintenance. The maintenance in districts so established may be done by contract or by forces employed by the city or town or by both, in such manner as the council may elect.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; R.C.M. 1947, 11-2266(part); amd. Sec. 6, Ch. 212, L. 1983.

7-12-4405. Improvements within maintenance districts — ordinance required. (1) (a) Cities and towns may prepare and improve streets, avenues, and alleys within the maintenance districts so that the maintenance will be of a durable and continuing benefit. The city or town council shall provide by ordinance a method or methods of doing the work and improvements.

(b) For the purposes of this section, "improvements" includes but is not limited to the installation of traffic signs, new curb and gutter construction, and widening of existing streets.

(2) Cities and towns are authorized to maintain the work and improvements made under subsection (1).

(3) At least 12 days must elapse between the day on which the proposed ordinance is introduced and the day on which final action on the ordinance is taken.

History: (1)En. Sec. 1, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.1, R.C.M. 1935; Sec. 11-2258, R.C.M. 1947; (2)En. Sec. 3, Ch. 12, Ex. L. 1933; re-en Sec. 5271.3, R.C.M. 1935; Sec. 11-2260, R.C.M. 1947; (3)En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; Sec. 11-2262, R.C.M. 1947; R.C.M. 1947, 11-2258, 11-2260, 11-2262(part); amd. Sec. 7, Ch. 212, L. 1983; amd. Sec. 2, Ch. 188, L. 1999.

7-12-4406. Notice of ordinance for improvements. The city or town clerk must give notice of the introduction of the proposed ordinance and of the time it will be up for final adoption. The notice must be published as provided in 7-1-4127.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part); amd. Sec. 8, Ch. 212, L. 1983; amd. Sec. 27, Ch. 354, L. 2001.

7-12-4407. Protest against ordinance for improvements. No further action shall be taken upon the proposed district for 1 year if a written protest against passage of the proposed ordinance is filed by:

(1) owners of property within the proposed maintenance district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district;

(2) not less than 50% of the owners of property within the district; or

(3) owners of property within the proposed maintenance district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part); amd. Sec. 9, Ch. 212, L. 1983; amd. Sec. 5, Ch. 657, L. 1985.

7-12-4408 through 7-12-4420 reserved.

7-12-4421. Choice in manner of making assessments. The assessments for the costs and expenses of maintaining streets, alleys, and public places shall be made against all of the property embraced within each maintenance district by one of the methods provided in 7-12-4422.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(part); amd. Sec. 10, Ch. 212, L. 1983; amd. Sec. 1, Ch. 657, L. 1985.

7-12-4422. Assessment of costs — area, frontage, lot, and taxable valuation options. (1) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the maintenance district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(2) The city council shall assess the percentage of the cost of maintenance established in 7-12-4425 against the entire district as follows:

(a) each lot or parcel of land within the district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) each lot or parcel of land within the district abutting upon a street upon which maintenance is done may be assessed for that part of the cost that its street frontage bears to the street frontage of the entire district;

(c) if the city council determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the assessable area of the lot or parcel;

(d) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the district that its taxable valuation bears to the total taxable valuation of the property of the district;

(e) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or

(f) any combination of the assessment options provided in subsections (2)(a) through (2)(e) may be used for the district as a whole or for any lot or parcel within the district.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(2); amd. Sec. 2, Ch. 657, L. 1985; amd. Sec. 1, Ch. 178, L. 1987; amd. Sec. 1, Ch. 567, L. 2005.

7-12-4423. Repealed. Sec. 6, Ch. 657, L. 1985.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(1); amd. Sec. 11, Ch. 212, L. 1983.

7-12-4424. Repealed. Sec. 6, Ch. 657, L. 1985.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(3); amd. Sec. 12, Ch. 212, L. 1983.

7-12-4425. Resolution for assessment of costs of maintenance. (1) The city council shall estimate, as near as practicable, the cost of maintenance in each established district annually, not later than the second Monday in August. The council shall pass and finally adopt a resolution specifying the district assessment option and levying and assessing all the property within the several districts with an amount equal to not less than 75% of the entire cost of said work.

(2) The resolution levying the assessment to defray the cost of maintenance shall contain or refer to a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite.

(3) Such resolution shall be kept on file in the office of the city clerk.

History: (1)En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; Sec. 11-2266, R.C.M. 1947; (2), (3)En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; Sec. 11-2268, R.C.M. 1947; R.C.M. 1947, 11-2266(part), 11-2268(part); amd. Sec. 13, Ch. 212, L. 1983; amd. Sec. 3, Ch. 657, L. 1985.

7-12-4426. Notice of resolution for assessment. (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of maintenance in the district or districts is on file in the city clerk's office and subject to inspection, must be published as provided in 7-1-4127.

(2) The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the council and must contain a statement setting out the method of assessment being proposed for adoption or the change in the method of assessment that is being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part); amd. Sec. 17, Ch. 251, L. 1979; amd. Sec. 14, Ch. 212, L. 1983; amd. Sec. 3, Ch. 188, L. 1999; amd. Sec. 28, Ch. 354, L. 2001.

7-12-4427. Hearing on resolution for assessment of costs. (1) At the time so set, the council shall meet and hear all objections which may be made to such assessment or any part thereof and may adjourn from time to time for that purpose and may by resolution modify such assessment in whole or in part.

(2) A copy of the resolution, certified by the city clerk, must be delivered to the financial officer, and the assessments shall be placed upon the tax roll and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part); amd. Sec. 15, Ch. 212, L. 1983.

7-12-4428. Assessment of costs of improvements and maintenance of improvements. Cities and towns are authorized to assess the cost of the work, improvements, and maintenance authorized by 7-12-4405 against the property in maintenance districts in the manner and as provided in 7-12-4421 and 7-12-4422 to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.4, R.C.M. 1935; R.C.M. 1947, 11-2261; amd. Sec. 16, Ch. 212, L. 1983; amd. Sec. 4, Ch. 657, L. 1985.

7-12-4429. Financial assistance from the United States and state of Montana. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America or the state of Montana for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment of the loans by yearly payments from funds derived from districts created under 7-12-4402, apportioned over a period of time not exceeding 20 years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.2, R.C.M. 1935; R.C.M. 1947, 11-2259; amd. Sec. 17, Ch. 212, L. 1983; amd. Sec. 18, Ch. 370, L. 1987; amd. Sec. 1, Ch. 100, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 100 in (1) near middle inserted "or the state of Montana"; and made minor changes in style. Amendment effective October 1, 2009.

7-12-4430 through 7-12-4435 reserved.

7-12-4436. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

Part 45
Special Provisions for Street Parking Districts

7-12-4501. Abandonment of street parking improvement district — resolution. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town, the mayor and council are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

7-12-4502. Notice of intention to abandon district. (1) After the passage of the resolution provided for in 7-12-4501, the city or town clerk shall publish a notice as provided in 7-1-4127 of the intention to abandon.

(2) The notice must specify the boundaries of the district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment and that unless 40% of the owners in the district file written protest with the clerk of the city or town before the passage of the resolution, it will be passed. The notice must also set forth, when applicable, that it is the duty of the owners of the property abutting on the street parking district involved to maintain the property after the abandonment.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part); amd. Sec. 29, Ch. 354, L. 2001.

7-12-4503. Protest to abandonment of district. Unless 40% of the property owners owning property abutting the district file written protests against the abandonment by the date set for the passage of the resolution of abandonment, the council shall pass a resolution declaring the district abandoned.

History: **En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part); amd. Sec. 18, Ch. 251, L. 1979.**

7-12-4504. Responsibility and liability of property owners following abandonment of district. (1) Following passage of the resolution of abandonment, it shall be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property.

(2) Such abandonment, however, shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: **En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).**

7-12-4505 through 7-12-4510 reserved.

7-12-4511. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: **En. Sec. 1, Ch. 276, L. 1987.**

Part 46
Fire Hydrant Maintenance Districts

7-12-4601. Authorization to create fire hydrant maintenance districts. Whenever the public convenience and necessity may require, one or more fire hydrant maintenance districts may be established in a city or town.

History: **En. Sec. 1, Ch. 572, L. 1983.**

7-12-4602. Resolution of intention to create a fire hydrant maintenance district. (1) Before creating any fire hydrant maintenance district, the city council shall pass a resolution of intention to do so.

(2) The resolution must designate the district number, describe the boundaries of the district, provide an estimate of the cost of any improvement and the cost of maintaining district fire hydrants, and the proportion of such costs to be assessed against the property within the district.

History: **En. Sec. 2, Ch. 572, L. 1983.**

7-12-4603. Notice of resolution of intent to create a fire hydrant maintenance district. (1) Upon passing the resolution required by 7-12-4602, the council shall publish a notice of the passage as provided in 7-1-4127. A copy of the notice must be mailed to the last-known address of every person, firm, or corporation having property within the proposed district on the same day the notice is first published or posted.

(2) The notice must describe the general character of the proposed improvement, state the estimated cost of the improvement and the cost of maintaining the hydrants within the district for the first year, and designate the time when and place where the council will hear and pass upon all protests against the establishment of the improvement or the creation of the district. The notice must refer to the resolution on file in the office of the city clerk for a description of the boundaries.

History: **En. Sec. 3, Ch. 572, L. 1983; amd. Sec. 30, Ch. 354, L. 2001.**

7-12-4604. Protest against creation of fire hydrant maintenance district. At any time within 15 days after the date of the first publication or posting of the notice of passage of the resolution of intention, an owner of property who would be liable for district assessments may make a written protest against the proposed improvement or the creation of the district, or both. The protest must be delivered, in writing, to the clerk of the city council, who shall endorse on the protest the date of receipt.

History: **En. Sec. 4, Ch. 572, L. 1983; amd. Sec. 558, Ch. 61, L. 2007.**

7-12-4605. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the 15-day protest period provided for in 7-12-4604, the city council shall proceed to hear and pass upon all protests, and its decision is final and conclusive. If the council finds that the owners of a majority of the property proposed to be assessed have protested on grounds of cost of the improvement, no further proceedings may be taken on the subject of such proposed improvement district for a period of at least 6 months from the date of expiration of the 15-day protest period.

(2) In determining whether or not sufficient protests have been filed to prevent further proceedings, property owned by a county, city, or town is considered the same as other property in the district.

(3) The city council may adjourn and reconvene the hearing on protests from time to time.

History: En. Sec. 5, Ch. 572, L. 1983.

7-12-4606. Resolution to create fire hydrant maintenance district. (1) The city council has jurisdiction to order the proposed improvements if:

(a) no protests have been delivered to the clerk of the city council within the 15-day protest period provided for in 7-12-4604; or

(b) protests have been found by the city council to be insufficient in number to halt further proceedings and such protests have been heard on their merits and denied.

(2) Before ordering the proposed improvements, the city council shall pass a resolution creating the fire hydrant maintenance district in accordance with the resolution of intention previously introduced and passed by the council.

History: En. Sec. 6, Ch. 572, L. 1983.

7-12-4607 through 7-12-4610 reserved.

7-12-4611. Resolution for assessment — assessment options. The city or town council shall estimate, as nearly as practicable, the entire cost of installing and maintaining fire hydrants each year and the portion thereof to be assessed against the property within the district. Before the first Monday in October, the council must pass and finally adopt a resolution levying and assessing the property within the district. The city or town council, for the purpose of making the assessment, shall adopt one of the following methods:

(1) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district bordering or abutting on the streets where fire hydrants are located to be assessed in its lineal proportion to the total lineal feet bordering or abutting on such streets.

(3) If the city council determines that the area, frontage, or combination options are inequitable, it may assess the cost of fire hydrant installation and maintenance:

(a) against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost that its taxable valuation, including improvements, bears to the taxable valuation of the entire district; or

(b) against the entire district, each lot or parcel of land receiving service within the district to be assessed by apportioning the whole cost according to a ratio between the water meter size servicing each lot or parcel and the whole cost.

History: En. Sec. 7, Ch. 572, L. 1983; amd. Sec. 1, Ch. 266, L. 1985.

7-12-4612. Collection method — utility options — resolution of assessment. The city council may assess the costs of fire hydrant maintenance through a resolution of assessment or it may collect the costs by assessing them along with water and sewer fees.

History: En. Sec. 8, Ch. 572, L. 1983.

7-12-4613 through 7-12-4620 reserved.

7-12-4621. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

CHAPTER 13
UTILITY SERVICES

Part 1 — Metropolitan Sanitary and/or Storm Sewer District

7-13-101. Authorization to create metropolitan sanitary and/or storm sewer districts.
7-13-102. Resolution of intention to create metropolitan sanitary and/or storm sewer district.
7-13-103. Sufficiency of description in resolution of intention.
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7-13-105. Concurrence required for further proceedings.
7-13-106. Resolution of concurrence.
7-13-107. Notice of resolution of intention upon concurrence — hearing.
7-13-108. Right to protest.
7-13-109. Sufficient protest to bar proceedings.
7-13-110. Hearing on protest.
7-13-111. Resolution creating district — power to order improvements.
7-13-112. County commissioners to administer district.
7-13-113. Change of boundaries — limitations.
7-13-114. Applicable provisions of laws relating to rural improvement districts.
7-13-115. Adequate records to be maintained.
7-13-116 through 7-13-120 reserved.
7-13-121. Assessment of costs.
7-13-122. Status of federal property within metropolitan sanitary and/or storm sewer district.
7-13-123. Restriction on assessments following change of boundaries.
7-13-124. Resolution to assess and levy tax for making improvements.
7-13-125. Term of assessment for costs of construction.
7-13-126. Notice of resolution to assess and levy tax for making improvements — protest.
7-13-127. Hearing on protest.
7-13-128. Assessments and other charges as lien.
7-13-129 through 7-13-140 reserved.
7-13-141. Charges for services.
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7-13-143. Charges for costs when federal funding is sought.
7-13-144. Resolution to establish service charges — hearing — limitations and tax levy.
7-13-145. Hearing and notice on tax levy for operation and maintenance.
7-13-146. Preparation and filing of district budget.
7-13-147 through 7-13-150 reserved.
7-13-151. Authorization for reserve fund.
7-13-152. Sources of money for reserve fund.
7-13-153. Transfers to reserve fund considered as loans.
7-13-154. Loans from reserve fund to bond fund as lien.
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7-13-156. Covenants to utilize and maintain reserve fund.

Part 2 — Solid Waste Management Districts (Repealed)

Part 3 — Joint Solid Waste Management Districts (Repealed)

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Part 21 — General Provisions Related to County Utility Services

7-13-2101. Authority to permit construction of utility mains.
7-13-2102. Constructed mains not to interfere with use of road.
7-13-2103. Payment of damages and restoration of road.
7-13-2104. Scope of prior sections.

Part 22 — County Water and/or Sewer Districts

7-13-2201. Definitions.
7-13-2202. Interpretation.
7-13-2203. County water and/or sewer districts authorized.

7-13-2204. Petition to create water and/or sewer district.
7-13-2205. Notice of petition — hearing required.
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7-13-2207. Effect of certain irregularities.
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7-13-2210. Notice of election.
7-13-2211. Conduct of election on question of creating district.
7-13-2212. Qualifications to vote on question of creating district.
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7-13-2215. Certificate of incorporation from secretary of state.
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7-13-2217. General powers of water and/or sewer district.
7-13-2218. District powers related to water and sewer projects.
7-13-2219. Power to construct works across roads and other obstacles.
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7-13-2222. Applicability of general election laws.
7-13-2223. Repealed.
7-13-2224. Repealed.
7-13-2225. Combination of elections.
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7-13-2231. District to be governed by board of directors.
7-13-2232. Composition of board of directors.
7-13-2233. Qualifications of directors.
7-13-2234. Term of office.
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7-13-2237. Repealed.
7-13-2238. Repealed.
7-13-2239. Repealed.
7-13-2240. Repealed.
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7-13-2244. Repealed.
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7-13-2246. Withdrawal of candidacy.
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7-13-2248. Repealed.
7-13-2249. Repealed.
7-13-2250. Repealed.
7-13-2251. Repealed.
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7-13-2254. Provision for vote by corporate property owner.
7-13-2255. Provision for vote by nonresident property owner.
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7-13-2271. Organization of board of directors.
7-13-2272. Duties of board president.
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7-13-2274. Conduct of business.
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7-13-2276. Right of initiative and referendum.
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7-13-2278. Duties of administrative personnel.
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7-13-2281. Notice of resolution for levy of assessment hearing.
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7-13-2286. Certain errors not to invalidate assessments or liens.
7-13-2287. Term of payment of assessments.
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7-13-2303. Method of assessment.
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7-13-2305. Legal sufficiency of notice.
7-13-2306. Contents of notice — hearing and protest.
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7-13-2308. Payment of tax under protest — action to recover.
7-13-2309. Collection of taxes.
7-13-2310. Taxes to be lien.
7-13-2311. Designation of fund depositary.
7-13-2312 through 7-13-2320 reserved.
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7-13-2325. Qualifications to vote on question of incurring bonded indebtedness.
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7-13-2327. Entry of bond election results.
7-13-2328. Sufficient vote required to issue bonds.
7-13-2329. Sale of bonds.
7-13-2330. Status of bonds — tax exemption.
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7-13-2340. Correction of erroneous property description.
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7-13-2511. Prohibition on operation of cable TV systems.
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7-13-2521. Repealed.
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7-13-2524. Repealed.

7-13-2525. Repealed.
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7-13-2527. Repealed.
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7-13-3011. Resolution creating district — power to order improvements.
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7-13-3017. Assessment of costs.
7-13-3018. Status of federal property within district.
7-13-3019. Restriction on assessments following change of boundaries.
7-13-3020. Resolution to assess and levy tax for making improvements.
7-13-3021. Notice of resolution to assess and levy tax for making improvements — protest.
7-13-3022. Term of assessment for costs of construction.
7-13-3023. Hearing on protest.
7-13-3024. Assessments and other charges as lien.
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7-13-3026. Charges for services.
7-13-3027. Resolution to establish service charges — hearing — limitations and tax levy.
7-13-3028. Hearing and notice on tax levy for operation and maintenance.
7-13-3029. Preparation and filing of district budget.
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7-13-3031. Authorization to use federal funds.
7-13-3032. Charges for costs when federal funding is sought.
7-13-3033 reserved.
7-13-3034. Authorization for reserve fund.
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7-13-3036. Transfers to reserve fund considered as loans.
7-13-3037. Loans from reserve fund to bond fund as lien.
7-13-3038. Limitation on repayment of loan to reserve fund.
7-13-3039. Covenants to use and maintain reserve fund.
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7-13-4509. Right to protest — procedure.
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7-13-4521. Implementation of program.
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Part 1
Metropolitan Sanitary and/or Storm Sewer District

Part Cross-References

County water and sewer districts, Title 7, ch. 13, parts 22 and 23.
Water quality permits, Title 75, ch. 5, part 4.
Sewage system operation, 75-5-511 through 75-5-515.

7-13-101. Authorization to create metropolitan sanitary and/or storm sewer districts. Whenever the public convenience and necessity may require, in order to construct sanitary and/or storm sewer systems within any county, which sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners, with the approval of the city or town council, may create metropolitan sanitary and/or storm sewer districts.

History: En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).

7-13-102. Resolution of intention to create metropolitan sanitary and/or storm sewer district. (1) Before creating any metropolitan sanitary and/or storm sewer district, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within said district, giving the boundaries thereof;

(d) the general character of the sanitary and/or storm sewer system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).

7-13-103. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957; R.C.M. 1947, 16-4405.

7-13-104. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-105. Concurrence required for further proceedings. If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-106. Resolution of concurrence. If the city or town council shall by resolution concur in the resolution of the board of county commissioners, a copy of the resolution of concurrence shall be transmitted to the board.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-107. Notice of resolution of intention upon concurrence — hearing. (1) If the city or town council concurs in the resolution of the board of county commissioners, the board shall give notice of the passage of its resolution of intention and of the concurrence in the resolution by the city or town council.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at the last-known place of residence, on the same day the notice is first published.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part); amd. Sec. 31, Ch. 354, L. 2001.

7-13-108. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, an owner of property liable to be assessed for the work may make a written protest against the proposed work.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of receipt.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part); amd. Sec. 559, Ch. 61, L. 2007.

7-13-109. Sufficient protest to bar proceedings. If the protest against the proposed work is made by the owners of more than 50% of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

7-13-110. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which said protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district.

(3) The board may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

Cross-References

Application to community college districts, 20-15-403.

7-13-111. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient;

(c) when a protest shall have been overruled.

History: En. Sec. 4, Ch. 185, L. 1957; R.C.M. 1947, 16-4404.

7-13-112. County commissioners to administer district. (1) The board of county commissioners shall be ex officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this part and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof.

(2) The commission shall be responsible for the condition and maintenance of all publicly owned streets, alleys, land, parks, or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957; R.C.M. 1947, 16-4411.

Cross-References

General powers of County Commissioners relating to roads, Title 7, ch. 14, part 21.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-13-113. Change of boundaries — limitations. (1) The county commissioners may by resolution make such changes in the boundaries of a district as they shall deem reasonable and proper but may not delete any portion of the proposed area which will create an island of included or excluded lands.

(2) They may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it will be conclusively presumed that an area which is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

History: En. 16-4414, 16-4415 by Secs. 1, 2, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part), 16-4415.

Cross-References

Restriction on assessments following change of boundaries, 7-13-123.

7-13-114. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2107, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply under the provisions of this part unless in conflict with the provisions of this part.

History: En. Sec. 13, Ch. 185, L. 1957; R.C.M. 1947, 16-4413; amd. Sec. 19, Ch. 370, L. 1987; amd. Sec. 13, Ch. 449, L. 1989; amd. Sec. 32, Ch. 354, L. 2001; amd. Sec. 16, Ch. 277, L. 2003.

7-13-115. Adequate records to be maintained. The records of the district pertaining to the collection of the operation and maintenance tax levied hereunder and the records of the district pertaining to expenditures for construction of the system shall be kept and maintained in the office of the treasurer of the county wherein the district is located. These records shall include but not be limited to a list of individual property which is delinquent in payment, together with the name of the owner or owners thereof.

History: En. Sec. 5, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.4.

7-13-116 through 7-13-120 reserved.

7-13-121. Assessment of costs. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of the improvements against the entire metropolitan sanitary district.

(2) Each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 7, Ch. 185, L. 1957; R.C.M. 1947, 16-4407.

7-13-122. Status of federal property within metropolitan sanitary and/or storm sewer district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that the said lots, pieces, or parcels of land shall be omitted from the assessment to be made thereto to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: **En. Sec. 6, Ch. 185, L. 1957; R.C.M. 1947, 16-4406.**

7-13-123. Restriction on assessments following change of boundaries. Nothing in 7-13-113, however, shall permit the assessment of the cost of any such system against the lands remaining in the district after any such boundary change at a rate per square foot higher than the rate per square foot which would have been so assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in said resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing held thereon upon notice as required for the original resolution of intention.

History: **En. 16-4414 by Sec. 1, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part).**

7-13-124. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in a special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for that purpose by using as a basis for the assessment the method provided for by this part.

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the presiding officer of the board, must be kept on file in the office of the county clerk.

History: **En. Secs. 8, 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part), 16-4409(part); amd. Sec. 560, Ch. 61, L. 2007.**

Cross-References

Method of assessment, 7-13-121.

7-13-125. Term of assessment for costs of construction. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer district may be spread over a term of not to exceed 20 years, payment to be made in equal installments.

History: **En. Sec. 8, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part).**

7-13-126. Notice of resolution to assess and levy tax for making improvements — protest. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, must be published as provided in 7-1-2121.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part); amd. Sec. 33, Ch. 354, L. 2001.**

7-13-127. Hearing on protest. (1) The time for the hearing on protest must be not less than 5 days after the final publication of the notice required by 7-13-126.

(2) At the time fixed for the hearing, the board of county commissioners shall meet and hear all objections and for that purpose may adjourn from day to day. The board may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the county clerk, must be delivered to the county treasurer within 2 days after its passage.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part); amd. Sec. 34, Ch. 354, L. 2001.**

7-13-128. Assessments and other charges as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: **En. Sec. 10, Ch. 185, L. 1957; R.C.M. 1947, 16-4410.**

7-13-129 through 7-13-140 reserved.

7-13-141. Charges for services. (1) The board of county commissioners shall have authority by ordinance or resolution to fix and establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated by, controlled by, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this part.

(2) Such rates, charges, and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part); amd. Sec. 2, Ch. 419, L. 1981.

Cross-References

Maintenance of reserve fund, 7-13-156.

7-13-142. Authorization to utilize federal funds. The board of county commissioners is hereby authorized to apply for and receive from the federal government, on behalf of said metropolitan sanitary and/or storm sewer district, any money that may be appropriated by the congress for aiding in local public works projects. Likewise, the board may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the same out of the money received from the tax levy provided for in this part.

History: En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).

7-13-143. Charges for costs when federal funding is sought. Notwithstanding any other section of this part or limitation imposed therein, when the board has applied pursuant to 7-13-142, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

History: En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).

7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. The board of county commissioners may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year to provide income and revenue adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) fix and establish an additional charge for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) subject to 15-10-420, levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements on the parcel or lot in the district in order to provide sufficient revenue for the reserve fund in an amount necessary to meet the financial requirements of the fund as described in 7-13-151 through 7-13-156.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part); amd. Sec. 1, Ch. 403, L. 1981; amd. Sec. 3, Ch. 419, L. 1981; amd. Sec. 11, Ch. 453, L. 2005.

7-13-145. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the county commissioners shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the commissioners by publication as provided in 7-1-2121.

History: En. Sec. 2, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.1; amd. Sec. 18, Ch. 349, L. 1985; amd. Sec. 35, Ch. 354, L. 2001.

7-13-146. Preparation and filing of district budget. (1) Not less than 30 days prior to the date of the public hearing on the resolution, the county commissioners shall prepare and file in the office of the clerk and recorder of the county wherein the district is located and in the office of the board of county commissioners a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year which the levy is assessed.

(2) The provisions of law relating to county budgets and expenditures must be complied with by a metropolitan sanitary and/or storm sewer district.

History: **En. Secs. 3, 4, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.2, 16-4416.3.**

7-13-147 through 7-13-150 reserved.

7-13-151. Authorization for reserve fund. The board of county commissioners may, in order to secure prompt payment of any metropolitan sanitary and/or storm sewer district bonds issued in payment of the cost of improvements in and for the district and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of such bonds.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).**

7-13-152. Sources of money for reserve fund. (1) For the purpose of providing money for the reserve fund, the board of county commissioners may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district such amount or amounts as may be deemed necessary or as may be agreed with the holders of the bonds.

(2) Whenever there shall be money in the bond fund which is not required for payment of any bond of the district or interest thereon, so much as may be necessary to pay the loan referred to in 7-13-154 shall, by order of the board, be transferred to the reserve fund.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).**

7-13-153. Transfers to reserve fund considered as loans. The amount or amounts transferred under 7-13-152 shall be deemed and considered as loans from the operation and maintenance fund to the reserve fund.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).**

7-13-154. Loans from reserve fund to bond fund as lien. (1) Whenever any loan is made to any bond fund from the reserve fund, the reserve fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments; on all unpaid assessments and installments of assessments on the district, whether delinquent or not; and on all money thereafter coming into the bond fund to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond for payment of which or of interest thereon such loan was made.

(2) If, after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the reserve fund.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).**

7-13-155. Limitation on repayment of loan to reserve fund. Nothing in 7-13-151 through 7-13-156 permits the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds has been paid.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part); amd. Sec. 19, Ch. 251, L. 1979.**

7-13-156. Covenants to utilize and maintain reserve fund. (1) In connection with the issuance of metropolitan sanitary and/or storm sewer district bonds, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds, in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of 7-13-141 and 7-13-144 by establishing and collecting rates, charges, and rentals for sewer services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system, sufficient to maintain such balance in the reserve fund as the board may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) shall be binding upon the county as long as any of said bonds so offered or any interest thereon remains unpaid.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

Part 2
Solid Waste Management Districts
(Repealed)

7-13-201. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 71, L. 1969; R.C.M. 1947, 69-6001; amd. Sec. 29, Ch. 770, L. 1991.

7-13-202. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 71, L. 1969; amd. Sec. 1, Ch. 136, L. 1971; R.C.M. 1947, 69-6002; amd. Sec. 6, Ch. 770, L. 1991; amd. Sec. 25, Ch. 418, L. 1995.

7-13-203. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part); amd. Sec. 29, Ch. 770, L. 1991.

7-13-204. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part); amd. Sec. 1, Ch. 464, L. 1981; amd. Sec. 7, Ch. 770, L. 1991.

7-13-205. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part); amd. Sec. 29, Ch. 770, L. 1991.

7-13-206. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).

7-13-207. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).

7-13-208. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(2); amd. Sec. 2, Ch. 464, L. 1981; amd. Sec. 19, Ch. 349, L. 1985; amd. Sec. 36, Ch. 354, L. 2001.

7-13-209. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 3, Ch. 464, L. 1981; amd. Sec. 8, Ch. 770, L. 1991; amd. Sec. 561, Ch. 61, L. 2007.

7-13-210. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 27, Ch. 770, L. 1991.

7-13-211. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 4, Ch. 464, L. 1981.

7-13-212. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part); amd. Sec. 9, Ch. 770, L. 1991.

7-13-213. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part); amd. Sec. 29, Ch. 770, L. 1991; amd. Sec. 5, Ch. 543, L. 1995.

7-13-214. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part); amd. Sec. 20, Ch. 251, L. 1979; amd. Sec. 29, Ch. 770, L. 1991.

7-13-215. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(part); amd. Sec. 10, Ch. 770, L. 1991; amd. Sec. 6, Ch. 543, L. 1995.

7-13-216. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(9).

7-13-217. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 11, Ch. 71, L. 1969; R.C.M. 1947, 69-6011.

7-13-218. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 136, L. 1971; amd. Sec. 1, Ch. 179, L. 1973; R.C.M. 1947, 69-6013; amd. Sec. 29, Ch. 770, L. 1991; amd. Sec. 562, Ch. 61, L. 2007.

7-13-219 through 7-13-230 reserved.

7-13-231. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 5, Ch. 464, L. 1981; amd. Sec. 1, Ch. 643, L. 1991; amd. Sec. 29, Ch. 770, L. 1991; amd. Sec. 26, Ch. 418, L. 1995; amd. Sec. 1, Ch. 261, L. 1999; amd. Sec. 1, Ch. 170, L. 2001.

7-13-232. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 1, Ch. 510, L. 1989; amd. Sec. 11, Ch. 770, L. 1991; amd. Sec. 1, Ch. 159, L. 1999; amd. Sec. 37, Ch. 354, L. 2001; amd. Sec. 1, Ch. 453, L. 2001.

7-13-233. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 12, Ch. 770, L. 1991; amd. Sec. 16, Ch. 27, Sp. L. November 1993.

7-13-234. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 29, Ch. 770, L. 1991.

7-13-235. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 8, Ch. 71, L. 1969; R.C.M. 1947, 69-6008; amd. Sec. 13, Ch. 770, L. 1991.

7-13-236. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 14, Ch. 770, L. 1991; amd. Sec. 1, Ch. 206, L. 1993.

7-13-237. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 15, Ch. 770, L. 1991; amd. Sec. 12, Ch. 29, L. 2001.

7-13-238 through 7-13-240 reserved.

7-13-241. Repealed. Sec. 28, Ch. 770, L. 1991.
History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part); amd. Sec. 21, Ch. 251, L. 1979.

7-13-242. Repealed. Sec. 28, Ch. 770, L. 1991.
History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part).

7-13-243. Repealed. Sec. 28, Ch. 770, L. 1991.
History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

Part 3
Joint Solid Waste Management Districts
(Repealed)

7-13-301. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 16, Ch. 770, L. 1991.

7-13-302. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 17, Ch. 770, L. 1991.

7-13-303. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 18, Ch. 770, L. 1991.

7-13-304. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 19, Ch. 770, L. 1991.

7-13-305. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 20, Ch. 770, L. 1991.

7-13-306. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 21, Ch. 770, L. 1991.

7-13-307. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 22, Ch. 770, L. 1991.

7-13-308. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 23, Ch. 770, L. 1991; amd. Sec. 2, Ch. 206, L. 1993.

7-13-309. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 24, Ch. 770, L. 1991; amd. Sec. 13, Ch. 29, L. 2001.

7-13-310. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 25, Ch. 770, L. 1991.

7-13-311. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 26, Ch. 770, L. 1991.

Parts 4 through 20 reserved

Part 21

General Provisions Related to County Utility Services

7-13-2101. Authority to permit construction of utility mains. The board of county commissioners shall have the power and authority to grant to any person, association, or corporation the right to construct and maintain in, along, and under any public road or highway within such county, any pipeline for the conveyance of natural or artificial gas, water, or any other substance for the use of any county, city, or town or the inhabitants thereof.
History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2102. Constructed mains not to interfere with use of road. When constructed, such pipeline shall not now or in the future interfere with the surface use of such road or highway.
History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2103. Payment of damages and restoration of road. The person, association, or corporation owning or constructing such pipeline:

(1) shall compensate such county for any and all damages done to any such road or highway in the laying, construction, or maintenance of such pipeline; and

(2) shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.
History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2104. Scope of prior sections. Nothing contained in 7-13-2101 through 7-13-2103 shall be construed as in any manner affecting any of the terms and provisions of Title 70, chapter 30.
History: En. Sec. 2, Ch. 75, L. 1927; re-en. Sec. 4476.2, R.C.M. 1935; R.C.M. 1947, 16-1115.

Part 22

County Water and/or Sewer Districts

Part Cross-References
Requirements of public utilities, Title 69, ch. 3, part 2.
Public Service Commission — ratemaking procedures, Title 69, ch. 3, part 3.

7-13-2201. Definitions. (1) The word "board" and the words "boards of directors" apply to the board of directors of the district.

(2) The term "county" means one or more counties and includes a city and county.

(3) The word "district", unless otherwise expressed or used, applies to a district formed under the provisions of this part and part 23. A district is a unit of local government separate and distinct from a municipality, but a district may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the state.

(4) The term "municipality", as used in this part and part 23, includes a consolidated city and county, city, or town and includes all corporations organized for municipal purposes within the districts.
History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part); amd. Sec. 1, Ch. 160, L. 1993.

7-13-2202. Interpretation. Nothing in this part and part 23 shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or sewers or the supply of water to or the acquisition thereof by counties or municipalities within this state.
History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2203. County water and/or sewer districts authorized. (1) A county water and/or sewer district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

(2) The people of any county or counties or portion of a city or a county or city and county or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, may organize a county water and/or sewer district under the provisions of this part and part 23 by proceeding as therein provided.

History: (1)En. Sec. 1, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4501, R.C.M. 1947; (2)En. Sec. 2, Ch. 242, L. 1957; amd. Sec. 1, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4502, R.C.M. 1947; R.C.M. 1947, 16-4501, 16-4502.

7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, must be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by either at least 10% of the registered voters of the territory included in the proposed district or by the owners of all of the real property in the district.

(2) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which the territory lies. Each of the petitions must be signed by at least 10% of the registered voters of the territory within the county to be included within the proposed district or by the owners of all of the real property included in the proposed district.

(3) A petition to create a water and/or sewer district must set forth and describe the proposed boundaries of the district and require that the district be incorporated under the provisions of part 23 and this part.

History: En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; R.C.M. 1947, 16-4503(part); amd. Sec. 1, Ch. 341, L. 2005.

7-13-2205. Notice of petition — hearing required. (1) The text of the petition referred to in 7-13-2204 shall be published as provided in 7-1-2121 in every county in which said territory lies.

(2) When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: (1), (2)En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; Sec. 16-4503, R.C.M. 1947; (3)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; R.C.M. 1947, 16-4503(part), 16-4504(part); amd. Sec. 20, Ch. 349, L. 1985.

7-13-2206. Hearing on petition — protest. (1) At the time for the hearing, the board of county commissioners shall hear the petition and those appearing thereon, together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county. The board of county commissioners may adjourn such hearing from time to time, not exceeding 4 weeks in all.

(2) Upon such hearing of said petition, the board of county commissioners shall determine whether or not said petition complies with the requirements of the provisions of this part and part 23 and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of county commissioners.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part).

7-13-2207. Effect of certain irregularities. No defect in the contents of the petition or in the title to or form of the notice or signatures or lack of signatures thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2208. Decision on petition — election required — exception. (1) On the final hearing provided for in 7-13-2206, the board of county commissioners shall make any changes in the proposed boundaries within the county that are considered advisable and shall define and establish the boundaries. The board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would benefit from the formation of the district. Land that will not, in the judgment of the board of county commissioners, benefit from the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall give notice of an election to be held in the proposed district for the purpose of determining whether the district is to be incorporated. The election must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(3) An election is not required if the petition for the creation of the district is signed by the owners of all of the real property in the proposed district. If an election is not held, upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries as an organized county water and/or sewer district. The county clerk and recorder shall forward a certified copy of the order to the secretary of state.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part); amd. Sec. 18, Ch. 250, L. 1985; amd. Sec. 42, Ch. 387, L. 1995; amd. Sec. 10, Ch. 234, L. 1997; amd. Sec. 12, Ch. 459, L. 1997; amd. Sec. 2, Ch. 341, L. 2005.

7-13-2209. Application to include benefited lands. A person whose lands are benefited by the district may, in the discretion of the board of county commissioners, have the lands included within the proposed district upon application to the board of county commissioners of the county in which the lands are located.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part); amd. Sec. 563, Ch. 61, L. 2007.

7-13-2210. Notice of election. (1) The notice of election required by 7-13-2208 shall describe the boundaries established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... County water and/or sewer district").

(2) This notice shall be published as provided in 13-1-108.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 319, Ch. 571, L. 1979.

7-13-2211. Conduct of election on question of creating district. (1) The election on the question of creating the district shall be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as otherwise provided in this part and part 23.

(2) At the election the proposition to be submitted shall be: "Shall the proposition to organize .... County water and/or sewer district under parts 22 and 23 of chapter 13 of Title 7 be adopted?"

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 320, Ch. 571, L. 1979.

7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), an individual is not entitled to vote at any election under the provisions of part 23 and this part unless the individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which the individual proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of the real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that the elector is qualified if registered to vote in any state of the United States and files proof of registration with the election administrator at least 40 days prior to the election in which the individual intends to vote.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 321, Ch. 571, L. 1979; amd. Sec. 3, Ch. 341, L. 2005; amd. Sec. 6, Ch. 93, L. 2007.

7-13-2213. Effect of insufficient favorable vote. In case less than a majority of the votes cast are in favor of said proposition, the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2214. Order creating district upon sufficient favorable vote. (1) If at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of county commissioners of each such county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated.

(2) The election administrator of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the clerk and recorder of the county or each county in which such district is situated a certificate stating that such a proposition was adopted.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 2, Ch. 591, L. 1991.

7-13-2215. Certificate of incorporation from secretary of state. (1) Upon the receipt of the certificate referred to in 7-13-2214(2) or the certified copy of the order referred to in 7-13-2208(3), the secretary of state shall, within 10 days, issue a certificate reciting that the district (naming it) has been incorporated according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the county clerk of the county or counties in which the district is situated.

(2) From and after the date of a certificate of incorporation from the secretary of state, the district named in the certificate must be considered incorporated with all the rights, privileges, and powers set forth in part 23 and this part.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 4, Ch. 341, L. 2005.

7-13-2216. Limitations on lawsuits challenging formation of district. (1) A finding of the board of county commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within 1 year after the order of the board of county commissioners declaring such district organized as herein provided and not otherwise.

(2) Any proceeding wherein the validity of the incorporation of the district is denied shall be commenced within 3 months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said district and all proceedings in respect thereto shall be held to be valid and in every respect legal and incontestable.

History: (1)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; R.C.M. 1947, 16-4505(part), 16-4513(part).

7-13-2217. General powers of water and/or sewer district. (1) Any district incorporated as provided in this part and part 23 shall have power to:

(a) have perpetual succession;

(b) sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(c) adopt a seal and alter it at pleasure;

(d) take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(e) make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(2) The powers enumerated in this part and part 23 shall, except as otherwise provided in this part and part 23, be exercised by the board of directors provided for in 7-13-2231 and elected and appointed as described in this part and part 23.

History: **(1)En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4514, R.C.M. 1947; (2)En. Sec. 15, Ch. 242, L. 1957; Sec. 16-4515, R.C.M. 1947; R.C.M. 1947, 16-4514(part), 16-4515.**

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-13-2218. District powers related to water and sewer projects. A district that is incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain, pursuant to Title 70, chapter 30, from that water association any type of property referred to in this section;

(3) store water for the benefit of the district;

(4) conserve water for future use;

(5) appropriate, acquire, and conserve water and water rights for the purposes of the district;

(6) in the name of the district, commence, maintain, intervene in, compromise, and assume the costs of any action or proceeding:

(a) involving or affecting the use of water, water rights, or sewer rights within the district that are used or useful for any purpose of the district or a benefit to any land situated in the district;

(b) to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of water that is used or useful for any purpose of the district or that is a common benefit to the lands within the district or its inhabitants;

(c) to prevent any interference with the water or water or sewer rights referred to in this section that may endanger the inhabitants or lands of the district;

(7) lease or purchase and carry on and maintain existing water rights, waterworks, sewerworks, canals, or reservoir systems;

(8) sell water or the use of water for household, domestic, or other similar purposes, sell sewer service, and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities, towns, or consumers located within or outside of the boundaries of the district;

(9) retain the services of architects and engineers for designing, preparing a feasibility study for, and drawing plans and specifications for a water or sewer system for the district, with the cost of these services apportioned and assigned against properties in the district; and

(10) establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of the district's systems or improvements, including but not limited to connection procedures, service termination, and the payment of rates and charges, including penalties and interest charges for delinquent accounts.

History: **En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4514(5) thru (7); amd. Sec. 1, Ch. 394, L. 1989; amd. Sec. 11, Ch. 645, L. 1991; amd. Sec. 1, Ch. 518, L. 1995; amd. Sec. 4, Ch. 125, L. 2001.**

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-13-2219. Power to construct works across roads and other obstacles. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross; provided such works are constructed in such manner as to afford security for life and property; and said board shall restore the crossings and intersections to their former state as near as may be or in a manner not to have impaired unnecessarily their usefulness.

History: **En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part).**

7-13-2220. Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities.

History: **En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part); amd. Sec. 22, Ch. 251, L. 1979.**

7-13-2221. Powers related to district finances. Any district incorporated as provided in this part may:

(1) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2) cooperate and contract with the state or federal government or any department or agency of the state or federal government in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness and refund or retire any indebtedness or lien that may exist against the district or property of the district;

(4) cause taxes to be levied in the manner provided for in part 23 and this part for the purpose of paying any obligation of the district and to accomplish the purposes of part 23 and this part in the manner provided in part 23 and this part;

(5) levy special assessments against property located in the district and benefited by any of its improvements, as provided in 7-13-2280 through 7-13-2289, and pledge the collections of the special assessments in whole or in part, with any other revenue of the district, to the payment of bonds issued pursuant to part 23; and

(6) enter into covenants and agreements as to the establishment and maintenance of reasonable rates and charges for the use of its systems or improvements or any part of the systems or improvements as required, in the judgment of the board of directors, for the favorable sale of bonds issued pursuant to part 23, including, without limitation, a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay debt service and operating, maintenance, and replacement costs of the system or improvement and fund necessary reserves or a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay operating and maintenance costs of the system or improvement, fund necessary reserves for the system or improvement, and pay debt service on bonds and to provide additional funds necessary for the purposes of the system or improvement or to provide assurance to the holders of bonds as to the sufficiency of the revenue.

History: **En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-1514(8) thru (10); amd. Sec. 1, Ch. 351, L. 1999.**

7-13-2222. Applicability of general election laws. Except as otherwise provided in this part and part 23, the provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections.

History: **En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).**

Cross-References

General election laws, Title 13.

7-13-2223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **(1)En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec 3, Ch. 296, L. 1977; Sec. 16-4507, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; (3)En. Sec. 21, Ch. 242, L. 1957; Sec. 16-4521, R.C.M. 1947; R.C.M. 1947, 16-4507(22), 16-4513(part), 16-4521(part); amd. Sec. 23, Ch. 251, L. 1979.**

7-13-2224. Repealed. Sec. 2, Ch. 538, L. 1979; Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election shall contain the names of the candidates and the details concerning the bonded indebtedness.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2241 and 7-13-2246.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969; R.C.M. 1947, 16-4535; amd. Sec. 41, Ch. 575, L. 1981; amd. Sec. 10, Ch. 220, L. 1985; amd. Sec. 3, Ch. 591, L. 1991.

7-13-2226 through 7-13-2230 reserved.

7-13-2231. District to be governed by board of directors. (1) At an election to be held within a district under the provisions of part 23 and this part and the laws governing general elections not inconsistent with part 23 and this part, the district shall elect a board of directors. The election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with the next regular or primary election. If no electors reside in the district at a time when directors of the district are to be elected, the directors to be elected must be appointed in a certificate of appointment presented to the board of directors of the district, signed by the owners of all of the real property in the district, and containing the signed acceptance of the appointment by all of the directors.

(2) The board of directors is the governing body of the district.

History: (1)En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; Sec. 16-4506, R.C.M. 1947; (2)En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4510, R.C.M. 1947; R.C.M. 1947, 16-4506(part), 16-4510(part); amd. Sec. 322, Ch. 571, L. 1979; amd. Sec. 43, Ch. 387, L. 1995; amd. Sec. 11, Ch. 234, L. 1997; amd. Sec. 5, Ch. 341, L. 2005.

7-13-2232. Composition of board of directors. (1) If there are no municipalities within the boundaries of said district, the board of directors shall consist of five members or three members if there are 10 or less qualified electors in the district.

(2) In all cases where the boundaries of such district include any municipality or municipalities, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of one additional director for each of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed, and, if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners of each county containing such territory.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2233. Qualifications of directors. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2234. Term of office. (1) All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

(2) Except as otherwise provided, the term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election.

(3) Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:

(a) In districts requiring the election of five elected directors, three directors shall serve for a term of 2 years and two for a term of 4 years.

(b) In districts requiring the election of three elected directors, one director shall serve for a term of 2 years and two for a term of 4 years.

(c) At their first meeting, the directors shall determine by lot which of them shall serve the term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.

(4) The term of office of directors appointed by the mayor or mayors or by the board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district.

(5) The first regular election for a district shall be held in November of the next odd-numbered year following the formation of the district.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 1, Ch. 538, L. 1979; amd. Sec. 323, Ch. 571, L. 1979.

7-13-2235. Election and appointment procedure. The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director by a mayor or a board of county commissioners shall be as provided in this part.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(1); amd. Sec. 42, Ch. 575, L. 1981.

7-13-2236. General district election. (1) The election of directors of the district shall be held every 2 years with the election for local government officials provided for in 13-1-104(2).

(2) The election of directors of a district located in an unincorporated area may be conducted by mail ballot as provided in Title 13, chapter 19.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 324, Ch. 571, L. 1979; amd. Sec. 28, Ch. 196, L. 1985; amd. Sec. 11, Ch. 220, L. 1985.

Cross-References

Combination of elections, 7-13-2225.

7-13-2237. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(2); amd. Sec. 388, Ch. 571, L. 1979.

7-13-2238. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(3), (4); amd. Sec. 325, Ch. 571, L. 1979.

7-13-2239. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 326, Ch. 571, L. 1979.

7-13-2240. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 327, Ch. 571, L. 1979.

7-13-2241. Filing of petition of nomination. (1) A petition of nomination, signed by at least five electors of the district for any one candidate, may be filed with the election administrator not earlier than 135 days or later than 75 days before the election. The election administrator shall endorse on the petition the date upon which the petition was presented.

(2) If the district lies in more than one county, the petition for nomination must be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under part 23 and this part.

(3) If the petition conforms to this section, the election administrator shall place the name of the petitioner on the ballot as a candidate for director of the district.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(6); amd. Sec. 328, Ch. 571, L. 1979; amd. Sec. 19, Ch. 250, L. 1985; amd. Sec. 4, Ch. 591, L. 1991; amd. Sec. 564, Ch. 61, L. 2007.

7-13-2242. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 329, Ch. 571, L. 1979; amd. Sec. 20, Ch. 250, L. 1985; amd. Sec. 20, Ch. 370, L. 1987.

7-13-2243. Assistance for election administrator. If necessary, the board of commissioners shall provide extra help to enable the election administrator to perform satisfactorily and promptly the duties imposed by this part.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 330, Ch. 571, L. 1979; amd. Sec. 43, Ch. 575, L. 1981.

7-13-2244. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(10); amd. Sec. 331, Ch. 571, L. 1979.

7-13-2245. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(8); amd. Sec. 389, Ch. 571, L. 1979.

7-13-2246. Withdrawal of candidacy. (1) An individual who has been nominated as a candidate may, not later than 75 days before the day of election, cause the individual's name to be withdrawn from nomination by filing with the election administrator a request for withdrawal in writing, and a withdrawn name may not be printed upon the ballot.

(2) If, upon withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions for nomination not later than 75 days prior to the election.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(9); amd. Sec. 332, Ch. 571, L. 1979; amd. Sec. 44, Ch. 575, L. 1981; amd. Sec. 21, Ch. 250, L. 1985; amd. Sec. 565, Ch. 61, L. 2007.

7-13-2247. Retention of petitions. The county clerk shall retain in the clerk's office for a period of 2 years all petitions of nomination filed under 7-13-2241.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(11); amd. Sec. 5, Ch. 591, L. 1991; amd. Sec. 566, Ch. 61, L. 2007.

7-13-2248. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2249. Repealed. Sec. 18, Ch. 79, L. 1983.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2250. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2251. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2252. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(18).

7-13-2253. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2254. Provision for vote by corporate property owner. Where a corporation owns real property within the boundaries of the district, the president, vice-president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

History: **En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).**

7-13-2255. Provision for vote by nonresident property owner. An elector owning real property within the district need not reside within the district in order to vote.

History: **En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).**

7-13-2256. Canvass of vote. (1) Except as provided in part 23 and this part, the board of county commissioners shall canvass the returns of the first election, and for subsequent elections, the board of directors shall meet as a canvassing board and canvass the returns at the first regular meeting of the board of directors after any district election, including any district bond election.

(2) If the district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the district shall canvass the returns of the first election.

History: **En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part); amd. Sec. 5, Ch. 342, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 342 in (1) at beginning inserted exception clause, near middle after "election, and" substituted "for subsequent elections" for "thereafter, except as provided in this part and part 23", and near end after "returns" substituted "at the first regular meeting of the board of directors" for "within 4 days"; and made minor changes in style. Amendment effective April 24, 2009.

7-13-2257. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(19).**

7-13-2258. Effect of failure to qualify for office. If a person elected fails to qualify, the office must be filled as if there were a vacancy in the office as provided in 7-13-2262(2).

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(20); amd. Sec. 2, Ch. 254, L. 1999.**

7-13-2259. Manner of making appointments. The mode of appointment of director or directors by a mayor or by a board of county commissioners shall be by certificate of appointment signed by said mayor or issued by said board of county commissioners and transmitted to the board of directors of said district.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(21).**

7-13-2260. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duty imposed upon said officer by the provisions of this part and part 23 shall be performed by the president of the board of trustees or other chief executive of the municipality.

History: **En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).**

7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term, elected by the board of directors to fill a vacancy, or appointed by a mayor or the board of commissioners for a full term, is subject to recall by the electors of any district organized under the provisions of this part and part 23 in accordance with Title 2, chapter 16, part 6.

History: **En. Sec. 9, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4509; amd. Sec. 24, Ch. 251, L. 1979; amd. Sec. 333, Ch. 571, L. 1979.**

7-13-2262. Insufficient candidates — vacancies on board of directors — appointment of entire board. (1) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the position and the term is the same as if the director were elected.

(2) Except as provided in subsections (3) and (4), any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by the remaining directors.

(3) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

(4) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (3), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(5) Following the appointment of a board in accordance with subsection (3), the directors must be elected as provided in this part.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part); amd. Sec. 3, Ch. 254, L. 1999.

7-13-2263 through 7-13-2270 reserved.

7-13-2271. Organization of board of directors. (1) The board of directors shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided. It shall choose one of its members president and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

(2) The board shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part).

7-13-2272. Duties of board president. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2273. Compensation of members of board. Each of the members of the board of directors shall receive a monthly salary that may not exceed the following amounts:

(1) $60 in districts with a population of no more than 500 persons;

(2) $80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and

(3) $100 in districts with a population of more than 5,000 persons.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part); amd. Sec. 1, Ch. 46, L. 1981.

7-13-2274. Conduct of business. (1) All legislative sessions of the board of directors, whether regular or special, must be open to the public. Notice of the sessions must be given and the sessions must be held in compliance with the requirements of Title 2, chapter 3, parts 1 and 2.

(2) A majority of the board constitutes a quorum for the transaction of business.

(3) The board may act only by ordinance or resolution.

History: En. Secs. 10, 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part), 16-4511(part); amd. Sec. 2, Ch. 518, L. 1995.

7-13-2275. Procedure relating to ordinances and resolutions — rates, fees, and charges established. (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of _______ district as follows:"

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) (a) Except as provided in subsection (5), prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(b) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(c) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(d) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(e) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

(5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part); amd. Sec. 3, Ch. 518, L. 1995; amd. Sec. 1, Ch. 395, L. 2003.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

7-13-2276. Right of initiative and referendum. (1) Ordinances may be passed by the electors of any district organized under the provisions of this part and part 23 in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

(2) Ordinances may be disapproved and thereby vetoed by the electors of any such district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Secs. 29, 30, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4529, 16-4530.

Cross-References

Initiative and referendum, Art. XI, sec. 8, Mont. Const.

Local government initiative and referendum, Title 7, ch. 5, part 1.

7-13-2277. Appointment of administrative personnel. (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor.

(2) The general manager, secretary, and auditor shall receive such compensation as the board shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957; R.C.M. 1947, 16-4512.

7-13-2278. Duties of administrative personnel. (1) The general manager has full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform other duties that may be imposed by the board. The general manager shall report to the board in accordance with rules that it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform other duties that may be imposed by the board.

(3) The auditor is charged with the duty of installing and maintaining a system of auditing and accounting that must completely and at all times show the financial condition of the district. The auditor shall draw warrants to pay demands made against the district when the demands have been first approved by at least three members of the board and by the general manager.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part); amd. Sec. 567, Ch. 61, L. 2007.**

7-13-2279. Performance bonds for administrative personnel. The general manager, secretary, and auditor and all other employees or assistants of said district who may be required to do so by the board of directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from time to time may provide.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).**

Cross-References

General provisions relating to official bonds, Title 2, ch. 9, part 5.

7-13-2280. Levy of special assessments. (1) In lieu of imposing rates and charges to pay the capital costs of any improvement provided for in this part, a district may levy special assessments to defray the costs against property within the district and benefited by the improvement. The costs of the improvement may include the costs of issuance of any bonds issued to finance the improvement and any reserve securing payment of the bonds.

(2) The board of directors shall by resolution levy and assess upon all property in the district benefited by the improvement, by using for a basis for the assessment the method or methods provided for in 7-12-2151.

(3) The resolution must contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each assessment and the day when the assessment becomes delinquent.

(4) The resolution, signed by the presiding officer of the board of directors, must be kept on file in the office of the secretary.

History: **En. Sec. 2, Ch. 351, L. 1999.**

7-13-2281. Notice of resolution for levy of assessment hearing. (1) A notice, signed by the secretary and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the secretary and is subject to inspection, must be:

(a) published as provided in 7-1-2121;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (the lands must be identified and the mailing address determined from the last-completed assessment roll for state, county, and school district taxes); and

(c) mailed to any other persons known to the secretary to have an ownership interest in the property.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the board of directors. The time for the hearing may not be less than 5 days after the second publication or less than 10 days after the mailing of the notice.

History: **En. Sec. 3, Ch. 351, L. 1999.**

7-13-2282. Hearing on assessment. (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose may adjourn from day to day.

(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which the lot, tract, or parcel is located within 2 days after passage of the resolution and not later than July 15 preceding the county's next fiscal year.

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property except as provided in 7-13-2290. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of assessment described in the resolution. A protest does not bar the board of directors from adopting subsequent resolutions pursuant to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing as provided in

7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests, instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment.

History: En. Sec. 4, Ch. 351, L. 1999; amd. Sec. 6, Ch. 341, L. 2005.

7-13-2283. Collection of assessments by county treasurer — delinquencies. (1) When any resolution of assessment has been certified by the secretary and the county clerk and recorder, it is the duty of the county treasurer in the county in which the lot, tract, or parcel is located, in accordance with the provisions of this title, to collect the assessment in the same manner and at the same time as taxes for general and municipal purposes are collected.

(2) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of directors and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Sec. 5, Ch. 351, L. 1999.

7-13-2284. Payment of assessment under protest — action to recover. (1) When any special assessment levied and assessed under any of the provisions of this part is considered unlawful by the party whose property is assessed, the person may pay the assessment or any part of the assessment considered unlawful under protest to the county treasurer.

(2) After the payment, the party or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the district on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. Any action instituted to recover the assessment paid under protest must be commenced within 60 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer until the determination of any action brought for the recovery of the assessment.

History: En. Sec. 6, Ch. 351, L. 1999.

7-13-2285. Procedure to correct assessment and to relevy. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special assessment is either invalid or its validity is questioned, the board of directors may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the assessment, including the ordering of the improvement, with the same force and effect as if made at the time provided by the law or resolution relating to the assessment. The board may reassess and relevy the assessment or tax with the same force and effect as an original levy.

(2) Any special assessment, upon reassessment or relevy, must, so far as practicable, be levied and collected the same as it would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts must be done in a proceeding that may result in a special assessment is subject to the qualifications of this part.

(3) Whenever any assessment is made and any property is assessed too little or too much, the assessment may be corrected and reassessed for the additional amount that is proper or the assessment may be reduced, even to the extent of refunding the assessment collected.

History: En. Sec. 7, Ch. 351, L. 1999.

7-13-2286. Certain errors not to invalidate assessments or liens. (1) When, under any of the provisions of this part, special assessments are assessed against any lot or parcel of land as the property of a particular person, a misnomer of the owner or supposed owner or other mistake relating to the ownership of the land may not affect the assessment or render it void or voidable.

(2) Any mistake in the description of property or the name of the owner may not vitiate any liens created by this part unless it is impossible to identify the property from the description.

History: En. Sec. 8, Ch. 351, L. 1999.

7-13-2287. Term of payment of assessments. (1) The payment of the assessment to defray the cost of constructing any improvement may be spread over a term not to exceed 40 years.

(2) The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or, if the board of directors prescribes in the resolution levying the assessments, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(3) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue on the assessment through the next date on which an installment of the assessment is otherwise payable.

History: En. Sec. 9, Ch. 351, L. 1999.

7-13-2288. Interest rate on unpaid assessments. The installments of assessments remaining unpaid bear simple interest at an annual rate equal to:

(1) the sum of:

(a) the average interest rate payable on the outstanding bonds issued to finance the improvement in respect of which the special assessments are levied; plus

(b) additional interest at a rate to be determined by the board of directors, not exceeding 2% a year; or

(2) if bonds are not issued to finance the improvements, at an interest rate to be determined by the board of directors, but not to exceed 10% a year.

History: En. Sec. 10, Ch. 351, L. 1999.

7-13-2289. Assessments and certain other charges as liens. Any special assessment made and levied to defray the cost and expenses of any improvement, together with any amounts imposed for delinquency and for cost of collection, constitutes a lien upon and against the property upon which the assessment is made and levied from and after the date of the passage of the resolution levying the assessment. This lien can be extinguished only by payment of the assessment, with all penalties, costs, and interest.

History: En. Sec. 11, Ch. 351, L. 1999.

7-13-2290. Protest procedures for property created as condominium — assessment of condominium property. (1) Whenever property created as a condominium is proposed to be assessed for costs of an improvement pursuant to 7-13-2280 and the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest under 7-13-2282 is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the district in accordance with 7-13-2282 the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.

(3) Each holder of title to a unit of a condominium that is proposed to be assessed for costs of a capital project is entitled to the passage of the resolution as provided in 7-13-2281, and if the assessments are levied, assessments must be levied against the units in the condominium as provided in subsection (4).

(4) Whenever property created as a condominium is to be subject to special assessments, each unit within the condominium is considered a separate parcel of real property subject to

separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

History: **En. Sec. 11, Ch. 341, L. 2005.**

Cross-References

Unit Ownership Act, Title 70, ch. 23.

Part 23
County Water and/or Sewer Districts
Continued

7-13-2301. Establishment of charges for services — payment of charges. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) (a) The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once every year, and set, as required, the rate, fee, toll, rent, tax, or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received. Taking into account the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2290 and any property taxes that will be levied to pay debt service on general obligation bonds authorized pursuant to 7-13-2331, the amount to be collected and appropriated must be sufficient in each year to provide income and revenue adequate for the:

(i) payment of the reasonable expense of operation and maintenance of the facilities;

(ii) administration of the district;

(iii) payment of principal and interest on any bonded or other indebtedness of the district; and

(iv) establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.

(b) A portion of the rate, fee, toll, rent, tax, or other charge provided for in subsection (2)(a) may be charged to the owner of an undeveloped lot, tract, or parcel to pay a share of the principal of and interest on bonded indebtedness issued to finance the capital cost of improvements to an existing water or sewer system, so long as the board makes findings in a resolution or ordinance of the district that demonstrate that the improvements to the existing system to be financed by the bonded indebtedness confer a direct benefit on the lot, tract, or parcel.

(3) A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service, or both, to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

(i) must specify the charges owed, including any interest and penalty;

(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;

(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and

(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.

(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid.

The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.

(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

(6) Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable to the treatment of that industrial user's wastes.

History: (1)En. Sec. 25, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4525, R.C.M. 1947; (2), (3)En. Sec. 26, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 17, Ch. 455, L. 1975; Sec. 16-4526, R.C.M. 1947; R.C.M. 1947, 16-4525, 16-4526; amd. Sec. 4, Ch. 518, L. 1995; amd. Sec. 12, Ch. 351, L. 1999; amd. Sec. 6, Ch. 342, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 342 in (2)(a) near beginning of first sentence after "every" substituted "year" for "2 years", after "rent" inserted "tax", at beginning of second sentence inserted "Taking into account the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2290 and any property taxes that will be levied to pay debt service on general obligation bonds authorized pursuant to 7-13-2331, the amount to be collected and appropriated must" and after "adequate" deleted "with the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2289 and appropriated"; inserted (2)(b) allowing a portion of board charges to be charged to the owner of the lot, tract, or parcel under certain circumstances; and made minor changes in style. Amendment effective April 24, 2009.

Cross-References

Public Service Commission's ratemaking procedures, Title 69, ch. 3, part 3.

7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) If for any reason the revenue of the district is inadequate to pay the interest or principal of any bonded debt as it becomes due, exclusive of revenue or special assessment bonded indebtedness incurred pursuant to 7-13-2333 or bonded indebtedness incurred to refund the revenue or special assessment bonded indebtedness without authorization at an election, or any other expenses or claims against the district, then the board of directors shall, at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which the district is located are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either purpose, together with a description of the lands benefited by the bonds, as stated by the board of directors in the resolution declaring the necessity to incur bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of the county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, shall:

(a) until any bonded debt is fully paid, levy upon the benefited lands and collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment of the bonded debt, to be known as the ...... district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment of the other expenses or claims, to be known as the .... district water and/or sewer tax.

(3) Taxes for the payment of any bonded debt must be levied on the property benefited, as stated by the board of directors in the resolution declaring the necessity for the bonds, and all taxes for other purposes must be levied on all property in the territory comprising the district.

History: (1), (2)En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; Sec. 16-4527, R.C.M. 1947; (3)En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; Sec. 16-4528, R.C.M. 1947; R.C.M. 1947, 16-4527(part), 16-4528(part); amd. Sec. 7, Ch. 341, L. 2005; amd. Sec. 7, Ch. 342, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 342 in (2)(b) near end after "payment of the" substituted "other expenses or claims" for "bonded debt". Amendment effective April 24, 2009.

Cross-References

Collection of taxes, 7-13-2309.

7-13-2303. Method of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined, the county commissioners or board of directors may use one of the following methods of assessment:

(a) each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its area bears to the total area of all of the lands to be assessed;

(b) the assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation as stated in the last-completed county assessment roll of the lots or parcels of land, exclusive of improvements, within the district. In that case, each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(c) each dwelling unit may be assessed a flat fee. For purposes of this subsection (1)(c), "dwelling unit" has the meaning provided for in 70-24-103.

(2) If the district lies in more than one county, the same method of assessment must be used by each board of county commissioners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 1, Ch. 96, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 96 in (1) in introductory clause at end inserted "the county commissioners or board of directors may use one of the following methods of assessment"; inserted (1)(c) providing that each dwelling unit may be assessed a flat fee; and made minor changes in style. Amendment effective March 25, 2009.

7-13-2304. Notice of intention to levy tax. (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, the board shall give notice of its intention to levy and collect a tax sufficient for the payment of bond obligations and other expenses.

(2) The notice must be given:

(a) by posting in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice as provided in 7-1-2121; and

(c) by forwarding, by mail as provided in 7-1-2122 at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners and the purchasers under contracts for deed of taxable real property within the district as shown by the current property tax record maintained by the department of revenue for the county or counties the boundaries of which include taxable real property of the district.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 6, Ch. 526, L. 1983; amd. Sec. 21, Ch. 349, L. 1985; amd. Sec. 17, Ch. 27, Sp. L. November 1993.

7-13-2305. Legal sufficiency of notice. The legislature hereby finds, determines, and declares that the giving of notice in accordance with 7-13-2304(2) is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in 7-13-2306(4) and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2306. Contents of notice — hearing and protest. The notice required by 7-13-2304 must state:

(1) the amount of money required;

(2) the method of assessment that the board or boards of county commissioners intend to employ;

(3) the boundaries or description of the lands to be assessed, which may be recited in full or may be given by reference to any instrument on file or of record in the office of the clerk and recorder or treasurer of the county or counties in which the district or part of the district is situated or with the department of revenue; and

(4) the time when and the place where the board or boards of county commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining to the tax.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 18, Ch. 27, Sp. L. November 1993.

7-13-2307. Hearing on protest to levy of tax. (1) The hearing provided for in 7-13-2306(4) shall be had no less than 15 days after the last publication of the notice.

(2) At the time and place designated for said hearing, any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered, and ruled upon by the board of county commissioners.

(3) The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2308. Payment of tax under protest — action to recover. (1) When the tax is considered unlawful for any reason by the person whose property is taxed, whether or not the person has protested the tax at the hearing provided for in 7-13-2306(4), the person may pay the tax or the installments of the tax under protest in the manner provided by 15-1-402 and, within the time prescribed and in the manner provided by 15-1-402, may commence an action to recover the tax or installments and in that action may contest and litigate the payment of the tax on the same grounds and for the same reasons stated in the written protest and for no other reasons and on no other grounds.

(2) All of the provisions of 15-1-402 for the retention or refunding of taxes paid under protest apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 568, Ch. 61, L. 2007.

7-13-2309. Collection of taxes. (1) All taxes referred to in 7-13-2302(3) shall be collected at the same time and in the same manner and form as county taxes are collected and when collected shall be paid to the district for which such taxes were levied and collected.

(2) Such taxes, if not paid, shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2310. Taxes to be lien. (1) If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as stated in the aforesaid resolution of the board of directors, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel. All taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel.

(2) Said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

Cross-References

Tax liens and limitations, Title 15, ch. 16, part 4.

7-13-2311. Designation of fund depositary. The board of directors shall designate a depositary or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss and shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2312 through 7-13-2320 reserved.

7-13-2321. Procedure to incur bonded indebtedness. (1) Whenever the board of directors considers it necessary for the district to incur a bonded indebtedness, other than for indebtedness to refund bonded indebtedness as provided for in 7-13-2332 or revenue or special indebtedness incurred pursuant to 7-13-2333, it shall by resolution state the purpose for the proposed debt, the land within the district to be benefited, the amount of debt to be incurred, the maximum term for the proposed bonds before maturity, and the proposition to be submitted to the electors.

(2) If no electors reside in the district at the time of adoption of the resolution or if the proposition is approved by all of the real property owners in the district to be benefited in a certificate of approval to be presented to the board of directors, the board of directors may incur the bonded indebtedness without an election. The board of directors may by resolution, at times that it considers proper, provide for the form and execution of the bonds and for their issuance.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part); amd. Sec. 5, Ch. 518, L. 1995; amd. Sec. 8, Ch. 341, L. 2005.

7-13-2322. Term of bonds. The maximum term of bonds shall not exceed 40 years.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part).

7-13-2323. Election on question of incurring bonded indebtedness. (1) The board of directors shall fix a date upon which an election is held for the purpose of authorizing the bonded indebtedness to be incurred. Except as provided in subsection (2), the election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with a regular or primary election.

(2) The board may order up to two special elections each year if:

(a) there are no bids within the amount of approved bonds;

(b) there is an emergency;

(c) a directive for a project is received from a government agency; or

(d) it is necessary to take advantage of the construction season.

History: En. Sec. 18, Ch. 242, L. 1957; R.C.M. 1947, 16-4518; amd. Sec. 334, Ch. 571, L. 1979; amd. Sec. 44, Ch. 387, L. 1995; amd. Sec. 12, Ch. 234, L. 1997.

7-13-2324. Notice of election on incurring bonded indebtedness. (1) The board of directors shall give notice of the holding of the election. The notice must:

(a) state the date of the election;

(b) state the hours the polls will be open;

(c) describe the boundaries of voting precincts, which may include only the lands to be benefited as stated in the resolution;

(d) describe the purpose of the issue, the amount of bonds proposed to be issued, and the term of years for repayment of the bonds;

(e) reference the resolution authorizing the election and state that it is available for public inspection; and

(f) state any other information that the board considers proper.

(2) The notice must be published as provided in 13-1-108.

History: (1)En. Sec. 19, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4519, R.C.M. 1947; (2)En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; Sec. 16-4520, R.C.M. 1947; R.C.M. 1947, 16-4519(part), 16-4520(part); amd. Sec. 335, Ch. 571, L. 1979; amd. Sec. 6, Ch. 518, L. 1995.

7-13-2325. Qualifications to vote on question of incurring bonded indebtedness. Every registered elector owning or residing upon real property within such voting precincts, but no others, shall be entitled to vote at the election.

History: En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; R.C.M. 1947, 16-4520(part); amd. Sec. 336, Ch. 571, L. 1979.

7-13-2326. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).

7-13-2327. Entry of bond election results. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results.

History: En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).

7-13-2328. Sufficient vote required to issue bonds. (1) (a) When the board of directors canvasses the vote of a bond election, the board shall determine the approval or rejection of the bond proposition as provided in subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:

(i) determine the total number of electors of the district who were qualified to vote at the bond election;

(ii) determine the total number of qualified electors who voted at the bond election;

(iii) calculate the percentage of qualified electors voting at the bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.

(c) When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition; otherwise it must be rejected.

(d) When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.

(2) For purposes of this section, the total number of electors of the district who are qualified to vote at the bond election equals the sum of:

(a) the individuals who possess all the qualifications required of electors under the general election laws of the state and who are residents of the district; and

(b) the individuals who have satisfied the requirements of 7-13-2212(2) with respect to the particular bond election.

(3) If the canvass of the vote establishes the approval and adoption of the bond proposition, then the board of directors may by resolution provide for the form and execution of the bonds and for the issuance of the bonds.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part); amd. Sec. 337, Ch. 571, L. 1979; amd. Sec. 9, Ch. 341, L. 2005; amd. Sec. 7, Ch. 93, L. 2007.

7-13-2329. Sale of bonds. The board of directors may sell or dispose of the bonds issued pursuant to 7-13-2321(2) or 7-13-2328 at times or in a manner that it considers to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part); amd. Sec. 10, Ch. 341, L. 2005.

7-13-2330. Status of bonds — tax exemption. Any bonds issued by any district organized under the provisions of this part and part 22 are hereby given the same force, value, and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: En. Sec. 23, Ch. 242, L. 1957; R.C.M. 1947, 16-4523.

7-13-2331. Issuance of general obligation bonds. (1) In addition to the powers granted to a district in this part to finance facilities and improvements, a district may issue general obligation bonds for a term of up to 40 years to:

(a) provide funds to pay part or all of the cost of acquisition, construction, or improvement of facilities; or

(b) refund any bonds issued for the acquisition, construction, or improvement of facilities.

(2) General obligation bonds issued pursuant to this section must be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4, except to the extent that those conditions conflict with the express provisions of part 22 or this part.

(3) Nothing in this section prohibits a district from imposing rates or other charges for the use of facilities that have been financed in whole or part by general obligation bonds under this section if the revenue from the rates or charges is used to abate taxes that have been levied to pay

the principal or interest on the general obligation bonds or is used to pay the principal or interest on other bonded indebtedness of the district.

History: En. Sec. 7, Ch. 518, L. 1995.

7-13-2332. Issuance of refunding bonds without election. (1) (a) District refunding bonds, issued to provide money to refund outstanding bonded indebtedness, may be issued without a vote of the electorate. In order to issue refunding bonds, the board of directors shall adopt a resolution setting forth the facts regarding the outstanding bonds that are to be redeemed, the reasons for issuing the refunding bonds, and the terms and details of the refunding bond issue.

(b) After adopting a resolution, the board of directors may sell the bonds at times and in a manner considered to be in the public interest.

(2) (a) Refunding bonds may be issued prior to the maturity or redemption date of the outstanding bonds they are to refund. The proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds or amounts to be used for the cost of issuance or establishing reserves for the refunding bonds, must be deposited with other funds appropriated for payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or in securities for which the principal and interest are guaranteed by the United States. The securities must be payable on the dates required and bear interest at a rate sufficient, with any cash retained in the escrow account, to pay, when due, accrued interest on each refunded bond until its maturity or redemption date if called for redemption. The securities must also be sufficient to pay the principal of the bond at maturity or upon the redemption date and to pay any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of principal, interest, and redemption premium, if any, of the refunded bonds.

(d) A district may pay for reasonable costs of issuing the refunding bonds and maintaining the escrow account. Alternatively, a district may issue crossover refunding bonds as provided in Title 17, chapter 5, part 21.

History: En. Sec. 8, Ch. 518, L. 1995.

7-13-2333. Issuance of revenue or special assessment bonds without election. (1) The board of directors of the district may authorize the issuance of bonds payable from all or a portion of the revenue of the district or from special assessments levied against benefited property in the district to finance the acquisition, construction, improvement, or extension of any facilities of the district benefiting all or any portion of the district for other authorized corporate purposes of the district, to refund bonds issued for those purposes, to fund a debt service refund for the security of the bonds, to pay interest on the bonds during the estimated period of construction or improvement of facilities, and to pay costs of the bond issuance. Revenue or special assessment bonds issued under this section may be authorized by a resolution adopted by the board of directors of the district without need for authorization by the electors. Bonded indebtedness incurred pursuant to this section may not be secured by the levy of the deficiency tax provided in 7-13-2302 if not submitted to and approved by the electors of the district.

(2) Revenue or special assessment bonds authorized in subsection (1) may be sold as provided in 7-13-2329. The board of directors may, by resolution, pledge to the payment of the revenue bonds or special assessment bonds all or a portion of the rates, fees, tolls, rents, or other charges afforded by or special assessments levied in respect of facilities of the district, whether financed with bonds or other available funds of the district. The pledge may be made on a parity with or with a superior or subordinate lien to the pledge of the revenue to other bonded indebtedness of the district, subject to any covenants made with owners of outstanding bonds of the district. The board of directors may also make covenants for the benefit of the owners of the bonds as provided in 7-13-2301, but the revenue or special assessment bonds may not be secured by the bond tax levied pursuant to 7-13-2302 or any other taxing powers of the district. The bonds do not constitute and may not be included as an indebtedness or liability of the district for purposes of any statutory debt limitation but are subject to the limitations of this section.

(3) Bonds may be issued under this section only if:

(a) the bonds are issued in the principal amounts and on terms that stipulate that the amount of principal and interest due in any fiscal year on the bonds and any other revenue or special assessment bonds of the district and issued under this section do not exceed the amount of the revenue or special assessment pledged to the payment of the bonds and received in that fiscal year as estimated by the board of directors of the district in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not later than 40 years after the date of issuance of the bonds or the useful life of the project financed from the proceeds of the bonds, as determined by the board of directors.

History: En. Sec. 12, Ch. 341, L. 2005.

7-13-2334 through 7-13-2339 reserved.

7-13-2340. Correction of erroneous property description. (1) As provided in this section, the board of directors of any district may correct an erroneous property description of land within the district.

(2) The board of directors shall by resolution:

(a) set forth the current property description and the proposed property description;

(b) set a date for a public hearing to be held on the proposed property description; and

(c) provide that the property description change is intended only for the purpose of correcting an erroneous land description.

(3) A copy of the resolution adopted pursuant to subsection (2) must be posted in three public places in the district and mailed to the owner or owners of record of the property described in subsection (2)(a).

(4) After hearing comments and receiving written consent by the owner or owners of the property described in subsection (2)(a) at the public hearing, the board of directors may by resolution adopt the proposed property description as the correct property description. The correct property description is effective upon filing a copy of the resolution with the county clerk and recorder of the county or counties in which the district is located.

History: En. Sec. 1, Ch. 259, L. 1985.

7-13-2341. Addition of land to district. (1) Except as provided in subsection (5), any portion of any county or any municipality, or both, may be added to any district organized under the provisions of part 22 and this part at any time upon petition presented in the manner provided in part 22 and this part for the organization of the district.

(2) The petition may be granted by ordinance of the board of directors of the district. The ordinance must be submitted for adoption or rejection to the vote of the electors in the district and in the proposed addition at a general election, at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election.

(3) If the ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county clerk and recorder of the county in which the district is located. Upon the receipt of the certification, the secretary of state shall within 10 days issue a certificate that states the passage of the ordinance and the addition of the territory to the district. A copy of the certificate must be transmitted to and filed with the county clerk and recorder of the county in which the district is situated.

(4) After the filing of the certificate, the territory is added to and is a part of the district with all the rights, privileges, and powers set forth in this part and necessarily incident to this part.

(5) If the board of directors determines that a district has a water facility or a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners and with the written consent of all property owners to whom the service is to be extended, expand the district to include land, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part); amd. Sec. 1, Ch. 411, L. 1981; amd. Sec. 22, Ch. 250, L. 1985; amd. Sec. 1, Ch. 597, L. 1985; amd. Sec. 45, Ch. 387, L. 1995; amd. Sec. 13, Ch. 234, L. 1997.

7-13-2342. Consolidation of county water and/or sewer districts. (1) Two or more districts organized under the provisions of part 22 and this part may consolidate at any time upon petitions submitted to the board of directors of each district. The petitions must be in the form required for petitions for the organization of districts. Each petition must be signed by not less than 10% of the registered voters of the territory included within the district.

(2) The petitions may be granted by ordinance of the board of directors of each district. The ordinances must be submitted for adoption or rejection to the vote of the electors in the district at general or special elections held, as provided in part 22 and this part, within 70 days after the adoption of the ordinances.

(3) If the ordinances are approved, the president and secretary of the boards of directors of each district shall certify that fact to the secretary of state and to the county clerk of the county or counties in which the districts are located. Upon the receipt of the certificate, the secretary of state shall within 10 days issue a certificate, reciting the passage of the ordinances and the consolidation of the districts. A copy of the certificate must be transmitted to and filed with the county clerk of each county in which the consolidated district is situated.

(4) After the date of the certificate, the districts are considered to be consolidated and consist of one district with all the rights, privileges, and powers set forth in part 22 and this part and necessarily incident to those rights, privileges, and powers.

(5) The number and manner of selection and election of directors of the consolidated district must be the same as the number and manner of selection and election of directors of newly organized districts.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part); amd. Sec. 569, Ch. 61, L. 2007.

7-13-2343. Exclusion of land from district — initiated by petition. Any territory included within any district formed under the provisions of this part and part 22 and not benefited in any manner by such district or its continued inclusion therein may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2344. Details relating to petition to exclude land from district. (1) The petition referred to in 7-13-2343 shall describe the territory sought to be excluded, shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district.

(2) Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of $100 to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order provided for in 7-13-2346. Any unconsumed balance shall be returned to the petitioner.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2345. Hearing and notice on petition to exclude land. (1) Upon the filing of a petition with the secretary of the district, the secretary shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of the petition to be published as provided in 7-1-2121. The notice must state the date of the filing of the petition and that the petition will be heard before the board of directors of the district.

(2) A landowner or taxpayer within the district has the right to appear at the hearing, either in behalf of or in opposition to the granting of the petition. The petition must be heard before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing must be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district.

History: **En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part); amd. Sec. 22, Ch. 349, L. 1985; amd. Sec. 570, Ch. 61, L. 2007.**

7-13-2346. Decision on petition to exclude land. (1) If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition or some portion thereof be excluded from the district or if it appears that such lands or some portion thereof will not be benefited by their continued inclusion in the district, then the board shall make an order that such lands or such portion thereof be excluded from the district, such order to describe specifically the lands so excluded.

(2) A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated, and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: **En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).**

7-13-2347. Effect of order excluding land. From the time of the making of the order of exclusion, the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded.

History: **En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).**

7-13-2348. Exclusion of land from district — initiated by board of directors. (1) The board of directors of any district formed under the provisions of this part and part 22 may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included or which may not be benefited in any manner by their continued inclusion therein.

(2) Such proceedings shall be initiated by the board by the passage of a resolution:

(a) requiring all persons interested to appear and show cause before the board, at a time and place specified, why such lands (describing them) should not be excluded from the district; and

(b) fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing.

(3) Upon the passage of such resolution, the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board by its resolution hereinbefore mentioned shall be not less than 25 days or more than 50 days after the passage of such resolution, and the place of hearing so fixed shall be a convenient place within the district.

(4) The final action of the board of directors under this section shall be subject to the referendum by the electors of the district according to 7-13-2276(2).

History: **En. Sec. 34, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4534.**

7-13-2349. Establishment of subdistricts. (1) The board of directors may establish one or more subdistricts within a district to provide for and finance the cost of water or sewer projects, improvements, or extensions that would benefit land in the subdistrict but not other land in the district. Before establishing a subdistrict, the board shall conduct a public hearing on the establishment of the proposed subdistrict after 10 days' notice published in a newspaper of general circulation in the district. The notice of public hearing must contain a description of the subdistrict and the proposed water or sewer project and its estimated cost. After the public hearing, the board of directors may, by resolution, establish the subdistrict if it finds that it is in the best interests of the owners of the land in the subdistrict and the district wishing to establish the subdistrict, that the subdistrict constitutes all land in the district benefited by the proposed water or sewer project, and that the establishment of the subdistrict and the financing of water or sewer projects for the benefit of the subdistrict will not violate any covenants of the district made with owners of outstanding bonds of the district.

(2) The board shall describe in the resolution establishing the subdistrict the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district and must constitute all of the land in the district benefited by the proposed water or sewer project.

(3) Following the establishment of a subdistrict, the board of directors may undertake and finance water or sewer projects, improvements, or extensions that benefit land in the subdistrict but not other land in the district, as provided in Title 7, chapter 13, parts 22 and 23, including but not limited to the incurrence of bonded indebtedness to finance costs and the levy of special assessments or the imposition of rates and charges, all subject to any covenants made with owners of outstanding bonds of the district. If general obligation bonds are to be issued to finance the costs of the projects, the subdistrict must be treated as the district for the purposes of 7-13-2331.

(4) The powers granted in this section are supplementary to the powers otherwise granted to county water and sewer districts.

History: En. Sec. 13, Ch. 341, L. 2005.

7-13-2350 reserved.

7-13-2351. Dissolution of district. (1) Upon receipt of a petition to dissolve the district, signed by more than 50% of the freeholders of the district, the board of directors shall set a date for a public hearing on dissolution of the district. The hearing date may be not earlier than 45 days or later than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on the dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the district to present claims owed by the district to the board of directors prior to the date set for the dissolution hearing.

(2) At the dissolution hearing the board of directors shall hear testimony of all persons interested in whether the district should be dissolved and shall determine whether there are any outstanding debts of the district.

(3) After the hearing, if the board determines that dissolution of the district is in the best interest of the public and that there are no outstanding debts of the district, it may resolve to recommend that the district be dissolved. A copy of the resolution must be sent to the county commissioners of the county or counties in which the district is located.

(4) The district is dissolved after the approval of the dissolution by all the boards of county commissioners of the counties in which the district is located. An instrument approving dissolution must be filed with the clerk and recorder of the county or counties in which the district is located, who shall then cause a copy of the instrument to be filed with the secretary of state.

(5) Any assets of the district after dissolution shall be distributed according to a specific plan adopted by the board of directors after a public hearing and set forth in the resolution recommending that the district be dissolved.

History: En. Sec. 1, Ch. 545, L. 1985; amd. Sec. 2, Ch. 545, L. 1985; amd. Sec. 1, Ch. 546, L. 1987.

Part 24
Garbage and Ash Collection Districts
(Repealed)

7-13-2401. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. 16-1031.1 by Sec. 1, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.1.

7-13-2402. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2403. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2404. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2405. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2406. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

Part 25
Television Districts

7-13-2501. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Secs. 2, 3, Ch. 198, L. 1961; R.C.M. 1947, 70-409, 70-410.

7-13-2502. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 1, Ch. 198, L. 1961; R.C.M. 1947, 70-408.

7-13-2503. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 4, Ch. 198, L. 1961; R.C.M. 1947, 70-411; amd. Sec. 1, Ch. 479, L. 1979.

7-13-2504. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Secs. 5, 6, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part), 70-413(part).

7-13-2505. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 5, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part); amd. Sec. 571, Ch. 61, L. 2007.

7-13-2506. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 198, L. 1961; R.C.M. 1947, 70-413(part); amd. Sec. 23, Ch. 349, L. 1985.

7-13-2507. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).

7-13-2508. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).

7-13-2509. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Secs. 7, 8, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part), 70-415(part); amd. Sec. 8, Ch. 396, L. 2001.

7-13-2510. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part); amd. Sec. 2, Ch. 13, L. 1979; amd. Sec. 2, Ch. 479, L. 1979; amd. Sec. 5, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 21, Ch. 370, L. 1987; amd. Sec. 7, Ch. 543, L. 1995.

7-13-2511. Prohibition on operation of cable TV systems. A television district organized under Title 7, chapter 11, part 10, or the former provisions of this part may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems.
History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part); amd. Sec. 28, Ch. 286, L. 2009.

Compiler's Comments
2009 Amendment: Chapter 286 near beginning after "organized under" inserted "Title 7, chapter, 11, part 10, or the former provisions of". Amendment effective July 1, 2009.

7-13-2512. Authorization for FM translator. (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners that initially established the district. The petition, its filing and processing, and the public hearing are governed by 7-11-1003, 7-11-1007, and 7-11-1008.

(b) If the county commissioners approve the petition, the resolution must authorize the board of trustees of the district to provide the requested services and must describe the proposed system, including the type of construction, proposed location, and estimated costs.
History: En. Sec. 1, Ch. 13, L. 1979; En. Sec. 10, Ch. 479, L. 1979; amd. Sec. 29, Ch. 286, L. 2009.

Compiler's Comments
2009 Amendment: Chapter 286 in (2)(a) in second sentence after "processing" inserted "and the public hearing" and after "governed by" substituted "7-11-1003, 7-11-1007, and 7-11-1008" for "7-13-2503, 7-13-2504, and 7-13-2505"; in (2)(b) deleted former first two sentences that read: "Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution"; and made minor changes in style. Amendment effective July 1, 2009.

7-13-2513 through 7-13-2520 reserved.

7-13-2521. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 8, Ch. 543, L. 1995.

7-13-2522. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 3, Ch. 479, L. 1979.

7-13-2523. Repealed. Sec. 25, Ch. 543, L. 1995.
History: **En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 4, Ch. 479, L. 1979.**

7-13-2524. Repealed. Sec. 25, Ch. 543, L. 1995.
History: **En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part).**

7-13-2525. Repealed. Sec. 25, Ch. 543, L. 1995.
History: **En. Sec. 14, Ch. 198, L. 1961; R.C.M. 1947, 70-421.**

7-13-2526. Repealed. Sec. 25, Ch. 543, L. 1995.
History: **En. Sec. 16, Ch. 198, L. 1961; R.C.M. 1947, 70-423.**

7-13-2527. Repealed. Sec. 39, Ch. 286, L. 2009.
History: **En. Sec. 10, Ch. 198, L. 1961; R.C.M. 1947, 70-417; amd. Sec. 3, Ch. 13, L. 1979; amd. Sec. 5, Ch. 479, L. 1979; amd. Sec. 1, Ch. 72, L. 1989; amd. Sec. 1, Ch. 773, L. 1991; amd. Sec. 5, Ch. 267, L. 1993; amd. Sec. 19, Ch. 27, Sp. L. November 1993.**

7-13-2528. Repealed. Sec. 39, Ch. 286, L. 2009.
History: **(1), (2)En. Sec. 11, Ch. 198, L. 1961; amd. Sec. 1, Ch. 79, L. 1975; Sec. 70-418, R.C.M. 1947; (3)En. Sec. 12, Ch. 198, L. 1961; Sec. 70-419, R.C.M. 1947; R.C.M. 1947, 70-418, 70-419; amd. Sec. 4, Ch. 13, L. 1979; amd. Sec. 6, Ch. 479, L. 1979; amd. Sec. 2, Ch. 72, L. 1989; amd. Sec. 20, Ch. 27, Sp. L. November 1993.**

7-13-2529. Repealed. Sec. 39, Ch. 286, L. 2009.
History: **En. Secs. 15, 17, Ch. 198, L. 1961; R.C.M. 1947, 70-422, 70-424; amd. Sec. 5, Ch. 13, L. 1979; amd. Sec. 7, Ch. 479, L. 1979; amd. Sec. 3, Ch. 72, L. 1989; amd. Sec. 1, Ch. 538, L. 1991; amd. Sec. 1, Ch. 216, L. 1997.**

7-13-2530 through 7-13-2540 reserved.

7-13-2541. Repealed. Sec. 39, Ch. 286, L. 2009.
History: **En. Sec. 1, Ch. 48, L. 1963; R.C.M. 1947, 70-426; amd. Sec. 8, Ch. 479, L. 1979.**

7-13-2542. Repealed. Sec. 39, Ch. 286, L. 2009.
History: **En. Sec. 18, Ch. 198, L. 1961; R.C.M. 1947, 70-425; amd. Sec. 9, Ch. 479, L. 1979.**

Parts 26 through 29 reserved

Part 30

Consolidated Local Government Water Supply and Sewer Districts

7-13-3001. Definitions. As used in this part, the following definitions apply:

(1) "District" means a district authorized in 7-13-3002 to provide a system.

(2) "Local government" means a consolidated form of local government provided for in Title 7, chapter 3, parts 11 through 13.

(3) "System" means a public water supply, sanitary sewer system, storm sewer system, or any combination of water supply, sanitary sewer, or storm sewer systems.
History: **En. Sec. 1, Ch. 282, L. 1991.**

7-13-3002. Authorization to create district. Whenever the public convenience and necessity may require, in order to construct a water supply, sanitary sewer, or storm sewer system within a local government that would serve the inhabitants of the local government, the governing body may create a district to provide the system.
History: **En. Sec. 2, Ch. 282, L. 1991.**

7-13-3003. Resolution of intention to create district. (1) Before creating a district, the governing body shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within the district, giving the boundaries of the district;

(d) the general character of the system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost of the district.
History: **En. Sec. 3, Ch. 282, L. 1991.**

7-13-3004. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient to briefly describe the work or the district and to refer to the resolution of intention for further particulars.

History: En. Sec. 4, Ch. 282, L. 1991.

7-13-3005. Notice of resolution of intention upon concurrence — hearing. (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at the last-known place of residence, on the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the boundaries.

History: En. Sec. 5, Ch. 282, L. 1991; amd. Sec. 38, Ch. 354, L. 2001.

7-13-3006. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for the system may make written protest against the proposed system.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of the receipt.

History: En. Sec. 6, Ch. 282, L. 1991.

7-13-3007. Sufficient protest to bar proceedings. If protests against the proposed system are received from the owners of 50% or more of the area in the proposed district, further proceedings may not be taken by the governing body.

History: En. Sec. 7, Ch. 282, L. 1991.

7-13-3008. Hearing on protest. (1) At the next regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall hear and pass upon all protests, and its decision is final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings, property owned by local government and school districts is considered the same as any other property in the district.

(3) The governing body may adjourn the hearing from time to time.

History: En. Sec. 8, Ch. 282, L. 1991.

7-13-3009 and 7-13-3010 reserved.

7-13-3011. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the governing body shall pass a resolution creating the district in accordance with the resolution of intention introduced and passed by the governing body.

(2) The governing body has jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest is found by the governing body to be insufficient; or

(c) when a protest is overruled.

History: En. Sec. 9, Ch. 282, L. 1991.

7-13-3012. Governing body to administer district. (1) The members of the governing body are ex officio commissioners of the district formed under the provisions of this part and have jurisdiction over the system within the district. The governing body is responsible for the proper functioning and maintenance of the system.

(2) The governing body is responsible for the condition and maintenance of all publicly owned roads, streets, alleys, land, parks, or other thoroughfares within the boundaries of the

district affected by the construction or maintenance of the structures under control and jurisdiction of the district.

History: En. Sec. 10, Ch. 282, L. 1991.

7-13-3013. Change of boundaries — limitations. (1) The governing body may by resolution make changes in the boundaries of a district as they consider reasonable and proper but may not delete any portion of the proposed area if the deletion will create an island of included or excluded lands.

(2) The governing body may not delete any portion of the proposed area that is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it is conclusively presumed that an area that is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

History: En. Sec. 11, Ch. 282, L. 1991.

7-13-3014 and 7-13-3015 reserved.

7-13-3016. Adequate records to be maintained. The records of the district pertaining to the collection of the operation and maintenance tax levied and the records of the district pertaining to expenditures for construction of the system must be kept and maintained in the office of the treasurer of the local government where the district is located. These records must include but not be limited to a list of individual property that is delinquent in payment, together with the name of the owner or owners of the property.

History: En. Sec. 13, Ch. 282, L. 1991.

7-13-3017. Assessment of costs. To defray the cost of installing and maintaining the system under the provisions of this part, the governing body shall adopt the following method of assessment:

(1) The governing body shall assess the entire cost of the improvements against the entire district.

(2) Each lot or parcel of land assessed in the district is to be assessed with that part of the whole cost that its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 14, Ch. 282, L. 1991.

7-13-3018. Status of federal property within district. Whenever any lot, piece, or parcel of land belonging to the United States fronts upon the proposed work or improvement or is to be included within the district, the governing body shall in the resolution of intention declare that the lots, pieces, or parcels of land must be omitted from the assessment to be made to cover the cost and expenses of the work or improvement, and the cost of the work or improvement in front of the lots, pieces, or parcels of land must be paid by the local government from its general fund.

History: En. Sec. 15, Ch. 282, L. 1991.

7-13-3019. Restriction on assessments following change of boundaries. Nothing in 7-13-3013 permits the assessment of the cost of the system against the lands remaining in the district after a boundary change at a higher rate per square foot than the rate per square foot that would have been assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in the resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing is held on the new resolution after notice as required for the original resolution of intention.

History: En. Sec. 16, Ch. 282, L. 1991.

7-13-3020. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in the district, the governing body shall by resolution levy and assess a tax upon all property in the district created for the purpose of the system by using as a basis for the assessment the method provided for by this part.

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the governing body, must be kept on file in the office of the local government clerk.

History: En. Sec. 17, Ch. 282, L. 1991.

7-13-3021. Notice of resolution to assess and levy tax for making improvements — protest. (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published as provided in 7-1-2121.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the governing body.

History: En. Sec. 19, Ch. 282, L. 1991; amd. Sec. 39, Ch. 354, L. 2001.

7-13-3022. Term of assessment for costs of construction. The payment of the assessment to defray the cost of constructing any improvements in the district may be spread over a term of not more than 20 years, with payment to be made in equal installments.

History: En. Sec. 18, Ch. 282, L. 1991.

7-13-3023. Hearing on protest. (1) The time for the hearing on protest must be not less than 5 days after the final publication of the notice required by 7-13-126.

(2) At the time fixed for the hearing, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage.

History: En. Sec. 20, Ch. 282, L. 1991; amd. Sec. 40, Ch. 354, L. 2001.

7-13-3024. Assessments and other charges as lien. A special assessment made and levied to defray the cost and expenses of the work for the system, together with any percentages imposed for delinquency and for cost of collection, is a lien upon the property upon which the assessment is made and levied, from and after the date of the passage of the resolution levying the assessment. The lien may only be extinguished by payment of the assessment, with all penalties, costs, and interest.

History: En. Sec. 21, Ch. 282, L. 1991.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

7-13-3025 reserved.

7-13-3026. Charges for services. (1) The governing body may by ordinance or resolution establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by a system operated by, controlled by, and under the jurisdiction of a district formed under this part.

(2) The rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of water supplied, the amount of sewage produced and its concentration, water pollution qualities in general, and the cost of disposal of sewage and storm waters.

History: En. Sec. 22, Ch. 282, L. 1991.

7-13-3027. Resolution to establish service charges — hearing — limitations and tax levy. The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and revenue adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) subject to 15-10-420, levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district to provide sufficient revenue for the reserve

fund in an amount necessary to meet the financial requirements of the fund as described in 7-13-3034 through 7-13-3039.

History: **En. Sec. 25, Ch. 282, L. 1991; amd. Sec. 12, Ch. 453, L. 2005.**

7-13-3028. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the governing body by publication as provided in 7-1-2121.

History: **En. Sec. 26, Ch. 282, L. 1991; amd. Sec. 41, Ch. 354, L. 2001.**

7-13-3029. Preparation and filing of district budget. (1) Not less than 30 days prior to the date of the public hearing on the resolution, the governing body shall prepare and file in the office of the clerk of the local government in which the district is located and in the office of the governing body a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year in which the levy is assessed.

(2) The provisions of law relating to local government budgets and expenditures must be complied with by the district.

History: **En. Sec. 27, Ch. 282, L. 1991.**

7-13-3030 reserved.

7-13-3031. Authorization to use federal funds. The governing body may apply for and receive from the federal government, on behalf of the district, any money that may be appropriated by congress for aiding in local public works projects. The governing body may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the loan out of the money received from the tax levy provided for in this part.

History: **En. Sec. 23, Ch. 282, L. 1991.**

7-13-3032. Charges for costs when federal funding is sought. Notwithstanding any other section of this part or a limitation imposed in this part, when the governing body has applied for funds pursuant to 7-13-3031, the governing body may adopt a system of charges and rates to require that each recipient of services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of services to pay that portion of the cost of construction of the system that is allocable to the industrial user.

History: **En. Sec. 24, Ch. 282, L. 1991.**

7-13-3033 reserved.

7-13-3034. Authorization for reserve fund. The governing body may, in order to secure prompt payment of any district bonds issued in payment of the cost of improvements for the district and the interest on the bonds as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of bonds.

History: **En. Sec. 28, Ch. 282, L. 1991.**

7-13-3035. Sources of money for reserve fund. (1) For the purpose of providing money for the reserve fund, the governing body may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district an amount as may be considered necessary or as may be agreed upon with the holders of the bonds.

(2) Whenever there is money in the bond fund that is not required for payment of a bond of the district or interest on the bond, as much as is necessary to pay the loan referred to in 7-13-3037 must, by order of the governing body, be transferred to the reserve fund.

History: **En. Sec. 29, Ch. 282, L. 1991.**

7-13-3036. Transfers to reserve fund considered as loans. The amount or amounts transferred under 7-13-3035 must be considered as loans from the operation and maintenance fund to the reserve fund.

History: **En. Sec. 30, Ch. 282, L. 1991.**

7-13-3037. Loans from reserve fund to bond fund as lien. (1) Whenever a loan is made to the bond fund from the reserve fund, the reserve fund has a lien for the amount of the loan on:

(a) the land within the district that is delinquent in the payment of its assessments;

(b) unpaid assessments and installments of assessments on the district, whether delinquent or not; and

(c) money coming into the bond fund to the amount of the loan, together with interest on the loan from the time it was made at the rate or percentage payable by the bond or of interest on the bond for which the loan was made.

(2) If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the governing body may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off the loan to the reserve fund.

History: **En. Sec. 31, Ch. 282, L. 1991.**

7-13-3038. Limitation on repayment of loan to reserve fund. Nothing in 7-13-3034 through 7-13-3039 permits the repayment of a loan to the reserve fund at any time unless all interest accrued on the bonds has been fully paid and all principal agreed to be paid in accordance with the redemption schedule as may be provided in the resolution or resolutions authorizing the bonds has been paid.

History: **En. Sec. 32, Ch. 282, L. 1991.**

7-13-3039. Covenants to use and maintain reserve fund. (1) In connection with the issuance of district bonds, the governing body may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds in amounts sufficient to make good any deficiency in the bond and interest accounts to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of 7-13-3026 and 7-13-3027 by establishing and collecting rates, charges, and rentals for services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system and sufficient to maintain a balance in the reserve fund as the governing body may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) are binding upon the local government as long as any bonds or any interest on the bonds remains unpaid.

History: **En. Sec. 33, Ch. 282, L. 1991.**

7-13-3040 reserved.

7-13-3041. Acquisition of private water supply system. (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may purchase the plant, franchise, or water supply upon terms agreed to by the parties.

(3) In case agreement is not reached in accordance with subsection (2), the governing body may take the plant, franchise, or water supply by eminent domain in accordance with Title 70, chapters 30 and 31.

History: **En. Sec. 34, Ch. 282, L. 1991.**

7-13-3042 reserved.

7-13-3043. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2107, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to this part unless in conflict with the provisions of this part.

History: **En. Sec. 12, Ch. 282, L. 1991; amd. Sec. 42, Ch. 354, L. 2001; amd. Sec. 17, Ch. 277, L. 2003.**

Parts 31 through 40 reserved

Part 41
General Provisions
Related to Municipal Utility Services

Part Cross-References

Water quality permits, Title 75, ch. 5, part 4.
Sewage system operation, 75-5-511 through 75-5-515.

7-13-4101. Authority to permit laying of utility mains. (1) The city or town council has power to permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer.

(2) The streets and alleys must be placed in as good condition by the person or corporation making the excavation as they were before the excavation was made and the mains laid down. In default thereof, the council may order the same to be done at the expense of such person or corporation.

History: En. Subd. 73, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.72, R.C.M. 1935; R.C.M. 1947, 11-975.

7-13-4102. Authority to acquire natural gas system — indebtedness permitted. (1) The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase, or development of an adequate supply of natural gas and to construct or purchase a system of gaslines for the distribution thereof to the inhabitants of the city or town or vicinity.

(2) No money may be borrowed or bonds issued for the purposes specified in this section until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby and the majority vote cast in its favor.

History: En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part).

7-13-4103. Limitation on indebtedness for acquisition of natural gas system. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 0.92% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, as ascertained by the last assessment for state and county taxes.

History: En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part); amd. Sec. 49, Ch. 614, L. 1981; amd. Sec. 14, Ch. 29, L. 2001.

7-13-4104. Inspection and measurement of gas, light, and electric or other power systems. The council of any incorporated city or town shall have power by ordinance to provide for and regulate the inspection and the measurement of gas, light, and electric or other power sold within its limits or brought into or carried through any such city or town.

History: En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907; re-en. Sec. 5040, R.C.M. 1921; re-en. Sec. 5040, R.C.M. 1935; R.C.M. 1947, 11-989.

7-13-4105. Regulation of vaults, cisterns, hydrants, pumps, sewers, and gutters. The city or town council has power to regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

History: En. Subd. 24, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.23, R.C.M. 1935; R.C.M. 1947, 11-926.

7-13-4106. Erection of poles, wires, rods, and cables. The city or town council has power to regulate or suppress the erection of poles and the stringing of wires, rods, or cables in the streets or alleys or within the limits of any city or town.

History: En. Subd. 43, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.42, R.C.M. 1935; R.C.M. 1947, 11-945.

7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide that service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for the carrier's equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier must be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.

History: **En. Sec. 1, Ch. 448, L. 1979; amd. Sec. 572, Ch. 61, L. 2007.**

Part 42
Public Sewer Systems

7-13-4201. Establishment of sewer systems. A sewer system may be established in a city or town, which system may be divided into public, district, and private sewers.

History: **En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).**

7-13-4202. Construction of public sewers. Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and materials, and under such regulations as may be prescribed by the council. There may be constructed such branches and extensions of sewers already constructed or to be constructed as may be considered expedient.

History: **En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).**

7-13-4203. Financing of public sewers. (1) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund or by availing itself of money derived from a bond issue authorized by the constitution and laws of the state.

(2) It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

History: **En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(2).**

7-13-4204. Rental charges for use of sewer system — election required. (1) Upon being petitioned by 5% of the qualified electors, the city council shall submit to a vote to the qualified electors, at the annual municipal election or at a special election held in conjunction with a regular or special election, the question of whether or not the city council may establish and collect rentals for the use of the sewer system, may fix the scale of the rentals, and may prescribe the manner and time at which the rentals must be paid:

(a) to provide the sewer fund;

(b) to provide for the retirement of the bonds and the payment of the interest on the bonds; or

(c) for any purpose mentioned in this section.

(2) If a majority of votes is cast in favor of the proposition, then the city or town council may establish and collect rentals for the use of the sewer system, may fix the scale of rentals, may prescribe the manner and time at which the rentals should be paid, and may change the scale of rentals from time to time as considered advisable.

(3) The revenue provided in this section are in addition to and not exclusive of other revenue that may be legally collected for sewer payment.

History: **En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part); amd. Sec. 46, Ch. 387, L. 1995.**

7-13-4205. Determination of rental charge. (1) The total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance, and repair of any such sewer system.

(2) For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities.

History: **En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).**

7-13-4206. Procedure to collect rentals. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed or by such procedure as may be prescribed by the city or town council.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4207. Special fund for sewer rentals. (1) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council.

(2) This fund shall be used for:

(a) the payment of the cost of management, maintenance, operation, and repair of the sewage system, including treatment and disposal works;

(b) for the creation of a sinking fund for the retirement of any indebtedness; and

(c) for the payment of interest on any such indebtedness.

(3) Any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment, and disposal works, and for retiring such debt but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those specified above.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(4).

7-13-4208. Procedure to challenge rates. Any 25 or more electors of a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory. The public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory. The municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(5).

Part 43
Municipal Sewage and/or Water Systems

7-13-4301. Establishment of sewage and water systems. Any city or town may:

(1) establish, build, construct, reconstruct, or extend:

(a) a storm or sanitary sewerage system;

(b) a plant or plants for treatment or disposal of sewage from the city or town;

(c) a water supply or distribution system; or

(d) any combination of systems; and

(2) operate and maintain the facilities for public use.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part); amd. Sec. 5, Ch. 453, L. 1993.

7-13-4302. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4303. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4304. Authority to charge for services. (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.

(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing

body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.

(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed.

(4) The water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered.

History: Ap. p. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; Sec. 11-2219, R.C.M. 1947; Ap. p. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; Sec. 11-2217, R.C.M. 1947; Ap. p. Sec. 1, Ch. 411, L. 1973; Sec. 84-4726.1, R.C.M. 1947; R.C.M. 1947, 11-2217(part), 11-2219(part), 84-4726.1(part); amd. Sec. 25, Ch. 251, L. 1979.

7-13-4305. Consumers required to pay for services. (1) No person, firm, or corporation shall be permitted to use said system unless they pay the full and established rate for said service.

(2) No person may have service reestablished after it is discontinued pursuant to 7-13-4306 unless they have paid the full amount past due, any interest or penalty on such past-due amount, and any required reestablishment deposit.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part); amd. Sec. 1, Ch. 115, L. 1987.

7-13-4306. Effect of failure to pay charges. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water or provision of sewer service to such premises to be discontinued until such charges are paid.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part); amd. Sec. 2, Ch. 115, L. 1987.

7-13-4307. Establishment of amount of charges. The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4308. Change and readjustment of charges. The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established, provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in 7-13-4307.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4309. Procedure to collect sewer or water charges. (1) Sewer or water charges must be collected by the treasurer.

(2) On or before July 7 of each year, notice must be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer or water service has been furnished prior to July 1 by the city or town. The notice must specify the assessment owing and in arrears at the time of giving notice. The notice must be in writing and must state the amount of arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the amount is paid within 30 days of the notice, the amount will be levied as a tax against the lot or parcel of real estate to which sewer or water service was furnished and for which payment is delinquent. The notice must also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court. The notice may be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(3) (a) Except as provided in subsection (3)(b), at the time that the annual tax levy is certified to the county clerk, the city treasurer or town clerk shall certify and file with the

department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and which arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer or water service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town.

History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973; R.C.M. 1947, 84-4726.1(part); amd. Sec. 1, Ch. 114, L. 1987; amd. Sec. 3, Ch. 115, L. 1987; amd. Sec. 21, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 423, L. 1999; amd. Sec. 14, Ch. 451, L. 2005.

7-13-4310. Role of public service commission unaffected. Nothing contained in this part shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in Title 69, chapters 1, 2, and 3.

History: En. Sec. 5, Ch. 98, L. 1955; R.C.M. 1947, 11-2220.1.

7-13-4311. Authorization to furnish water and sewer services to industrial consumers. (1) Subject to the provisions of subsection (2), the city or town council of any city or town within Montana that owns and operates a municipal water system, a municipal sewage system, or both, to furnish water services, sewage services, or both, to the inhabitants of the city or town as a public utility may, in addition to all other powers, furnish water from the water system and sewage services from the sewage system:

(a) to any person, factory, or other industry located within the corporate limits of the city or town; or

(b) to any person, factory, or other industry located outside the corporate limits of the city or town.

(2) (a) The services authorized by subsection (1) must be furnished at reasonable rates.

(b) Delivery of water and delivery of sewage services by a city or town to or for the use of any person, factory, or other industry located outside the corporate limits of the city or town must be made within or at the boundary line of the corporate limits of the city or town or from any existing waterline or sewerline of the city or town located outside of the corporate limits of the city or town, except as provided in this part.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(1); amd. Sec. 36, Ch. 42, L. 1997.

7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality. The city council of any city within Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of such city at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission. Such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(2).

7-13-4313. Illegal use of water or sewer system. Any person, firm, or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility who shall willfully turn on the waterline or sewerline after the same shall have been shut off by or under the direction of the city for nonpayment of water charges or sewer charges or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(3).

Cross-References

Misdemeanor penalty, 46-18-212.

7-13-4314. Annexation as a requirement for receiving service. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(4).

7-13-4315 through 7-13-4320 reserved.

7-13-4321. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part); amd. Sec. 45, Ch. 575, L. 1981.

7-13-4322. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(7).

7-13-4323. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(2).

7-13-4324. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4325. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4326. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4327. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4328. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(3), (4).

7-13-4329. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(5).

7-13-4330. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4331. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4332. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4333. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4334 through 7-13-4340 reserved.

7-13-4341. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4342. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(8).

7-13-4343. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4344. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(9).

7-13-4345. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(10).

Part 44
Water Supply and Regulation

7-13-4401. Water regulation. The city or town council has power to provide for the cleaning of waters, watercourses, and streams within the city or to alter, straighten, or widen the same and to provide for the draining and filling in of ponds, wells, or shafts on private property when necessary to the public health or public welfare.

History: En. Subd. 15, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.14, R.C.M. 1935; R.C.M. 1947, 11-917.

Cross-References

Water quality, Title 75, ch. 5.

Water conservation and flood control, Title 76, ch. 5, part 11.

7-13-4402. Obtaining municipal water supply. The city or town council has power to adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

History: En. Subd. 79, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.78, R.C.M. 1935; R.C.M. 1947, 11-981.

7-13-4403. Acquisition of private water supply system. (1) It is provided that whenever a franchise has been granted to or a contract made with any person or persons, corporation, or corporations and such person or persons, corporation, or corporations, in pursuance thereof or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water desired by the city or town for supplying the city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply shall, by the passage of an ordinance, give notice to such person or persons, corporation, or corporations that it desires to purchase the plant and franchise and water supply of such person or persons, corporation, or corporations.

(2) The city or town shall have the right to so purchase the plant or water supply upon such terms as the parties agree.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-13-4404. Use of eminent domain powers to acquire water supply system. (1) If agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under Title 70, chapter 30.

(2) A city or town acquiring property under Title 70, chapter 30, shall pay the amount of compensation to the owner of the plant or water supply within 6 months from the date that final judgment is entered in the condemnation proceedings.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 5, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

7-13-4405. Acquisition of water rights and other necessary property. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights and the necessary real and personal property to make an adequate water supply available. The water rights and property may be acquired by purchase, appropriation, location, condemnation pursuant to Title 70, chapter 30, or in any other legal manner.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 6, Ch. 125, L. 2001.

Cross-References

Permit to appropriate water, Title 85, ch. 2, part 3.

Reservation of waters by political subdivision, 85-2-316.

7-13-4406. Control over territory occupied by water supply system — taxation and condemnation powers. (1) Cities and towns have jurisdiction and control:

(a) over the territory occupied by their public works;

(b) over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of the public works; and

(c) over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply.

(2) Cities and towns may enact all ordinances and regulations necessary to implement subsection (1). For this purpose, the city or town may condemn private property in the manner provided in Title 70, chapter 30, and may levy a tax on all consumers of water for the purpose of defraying the expenses of procurement.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(4); amd. Sec. 7, Ch. 125, L. 2001.

Cross-References

Eminent domain, Title 70, ch. 30.

Part 45
Local Water Quality Districts

7-13-4501. Findings and purpose. (1) Pollution and degradation of surface water and ground water pose both immediate and long-term threats to the health, safety, and welfare of citizens of this state.

(2) Because of the expense and difficulty of ground water rehabilitation and cleanup and the need to protect drinking water supplies, policies and programs to prevent ground water contamination must be implemented.

(3) The purpose of this part is to provide for the creation of local water quality districts to protect, preserve, and improve the quality of surface water and ground water.

History: En. Sec. 1, Ch. 357, L. 1991.

7-13-4502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) "Board of environmental review" means the board of environmental review as provided in 2-15-3502.

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes and manufactured homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part.

History: **En. Sec. 2, Ch. 357, L. 1991; amd. Sec. 27, Ch. 418, L. 1995; amd. Sec. 29, Ch. 546, L. 1995; amd. Sec. 5, Ch. 200, L. 1997.**

7-13-4503 reserved.

7-13-4504. Authorization to initiate creation of a local water quality district. (1) The commissioners may initiate the creation of a local water quality district for the purpose of protecting, preserving, and improving the quality of surface water and ground water, as provided by this part, by holding a public meeting, passing a resolution of intention, providing an opportunity for owners of fee-assessed units to protest, and conducting a public hearing to hear and decide upon protests, as provided in 7-13-4506, 7-13-4507, 7-13-4509, and 7-13-4510.

(2) A city or town may be included in the district if approved by the governing body of the city or town.

History: **En. Sec. 3, Ch. 357, L. 1991.**

7-13-4505. Public meeting — resolution of intention to create local water quality district. (1) The commissioners shall hold at least one public meeting concerning the creation of a local water quality district prior to the passage of a resolution of intention to create the district.

(2) The resolution of intention must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands included in the district, including identification of the district boundaries that must correspond to the area in which the need for the district exists pursuant to subsection (2)(b);

(d) a general description of the proposed water quality program;

(e) the initial estimated cost of the water quality program; and

(f) the initial proposed fees to be charged.

History: **En. Sec. 4, Ch. 357, L. 1991.**

7-13-4506. Participation of cities and towns. (1) Upon passage of a resolution of intention, the commissioners shall transmit a copy of the resolution to the governing body of any incorporated city or town within the proposed local water quality district for consideration by the governing body.

(2) If the governing body of the city or town by resolution concurs in the resolution of intention, a copy of the resolution of concurrence must be transmitted to the commissioners.

(3) If the governing body of the incorporated city or town does not concur in the resolution of intention, the commissioners may not include the city or town in the district but may continue to develop a district that excludes the city or town.

History: **En. Sec. 5, Ch. 357, L. 1991.**

7-13-4507. Notice of resolutions of intention and concurrence. (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

(a) describes the local water quality program that would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the property tax record maintained by the department of revenue, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

History: **En. Sec. 6, Ch. 357, L. 1991; amd. Sec. 22, Ch. 27, Sp. L. November 1993; amd. Sec. 43, Ch. 354, L. 2001.**

7-13-4508 reserved.

7-13-4509. Right to protest — procedure. (1) At any time within 30 days after the date of the first publication of the notice provided for in 7-13-4507(1), a person owning a fee-assessed unit located within the proposed local water quality district may make written protest against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing and must be delivered to the county clerk, who shall endorse on it the date the protest is received.

(3) Owners may file one protest per fee-assessed unit.

History: En. Sec. 7, Ch. 357, L. 1991.

7-13-4510. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time period provided for in 7-13-4509, the commissioners shall hear and decide upon all protests.

(2) The commissioners may adjourn the hearing as necessary.

History: En. Sec. 8, Ch. 357, L. 1991.

7-13-4511. Sufficient protest to require referendum. If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless the commissioners submit a referendum to create the district to the registered voters who reside within the proposed district and the registered voters approve the creation of the district and establish the fees by approving the referendum.

History: En. Sec. 9, Ch. 357, L. 1991.

7-13-4512. Referendum. (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of 7-13-4523;

(b) the maximum dollar amount for a family residential unit;

(c) the type of activities proposed to be financed, including a general description of the local water quality program; and

(d) a general description of the areas included in the proposed district.

History: En. Sec. 10, Ch. 357, L. 1991.

Cross-References

Local government referendums, 7-5-131 through 7-5-137.

7-13-4513. Insufficient protest to bar proceedings — resolution creating district — power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the board of environmental review pursuant to 75-5-311.

History: En. Sec. 11, Ch. 357, L. 1991; amd. Sec. 28, Ch. 418, L. 1995.

7-13-4514 and 7-13-4515 reserved.

7-13-4516. Board of directors. (1) Except as provided in subsections (3)(b) and (5), the commissioners shall appoint a board of directors for the local water quality district.

(2) The board of directors consists of not less than five members, including one county commissioner or member of the governing body of a city-county consolidated government, one member from the governing body of each incorporated city or town that is included in the district, one member of the county or city-county board of health, and if the district includes a substantial amount of land that is within a conservation district or districts, one conservation district supervisor.

(3) The remaining members of the board of directors are selected from interested persons, as follows:

(a) from persons whose residences or businesses are distributed equally throughout the district if a county is the only unit of local government participating in the district; or

(b) through mutual agreement by all governing bodies if a county and one or more incorporated cities and towns are participating in the district.

(4) Terms of members of the board of directors are staggered and, after the initial terms, are for 3 years.

(5) In counties that have a full-time city-county health department, the city-county board of health, created as authorized by 50-2-106, may be designated as the board of directors for the local water quality district. If the city-county board of health is designated as the board of directors and if the local water quality district includes a substantial amount of land that is within a conservation district or districts, the board of directors must also include one member who is a conservation district supervisor.

History: En. Sec. 12, Ch. 357, L. 1991.

7-13-4517. Powers and duties of board of directors. The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of environmental review, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than $5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

History: En. Sec. 13, Ch. 357, L. 1991; amd. Sec. 29, Ch. 418, L. 1995.

7-13-4518. Powers and duties of commissioners. In addition to the other powers and duties of the commissioners authorized by this part, the commissioners may:

(1) adopt local ordinances in accordance with the requirements of 75-5-311;

(2) establish fees;

(3) review and approve the annual budget of the local water quality district; and

(4) approve the construction of facilities that cost more than $5,000 but not more than $100,000 a year and that are necessary to accomplish the purposes of this part, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

History: En. Sec. 14, Ch. 357, L. 1991.

7-13-4519. Role of county attorney — contracts for legal services. The board of directors may, by agreement with the commissioners, contract with the county attorney or an attorney licensed to practice law in the state of Montana to perform legal services for the local water quality district.

History: En. Sec. 17, Ch. 357, L. 1991.

7-13-4520 reserved.

7-13-4521. Implementation of program. The board of directors may implement a local water quality program in parts of a local water quality district before the program is implemented in the district as a whole. If a program is initially implemented in only a portion of a district, the fees may be levied only against that part of the district where the program is being implemented. As the program is expanded throughout the district, each additional part of the district that is covered by the program shall pay the fee.

History: En. Sec. 15, Ch. 357, L. 1991.

7-13-4522. Changes in district boundaries. The board of directors may by resolution make changes in the boundaries of a local water quality district that the board determines are reasonable and proper, following the same procedures of notice and hearing provided in 7-13-4507, 7-13-4509, and 7-13-4510, except that the notice provisions of 7-13-4507(3) apply only to the owners of proposed fee-assessed units in new areas that are proposed to be included in the district. If 20% of the owners of fee-assessed units in the new areas protest the inclusion in the district and the fees proposed to be charged, the board of directors is barred from further proceedings on the matter unless the registered voters who reside in the areas proposed for inclusion agree to be included in the district and accept the proposed fees by approving a referendum in accordance with the provisions of 7-13-4512.

History: En. Sec. 16, Ch. 357, L. 1991.

7-13-4523. Fees — determination of rates — increases — exemption for agricultural water use. (1) The commissioners shall determine fee rates according to a classification system that is based upon the volume of water withdrawn and the volume and type of waste produced at each fee-assessed unit in the local water quality district.

(2) Fees for commercial and industrial units must be based on a comparison with a typical family residential unit as to volume of water withdrawn and volume and type of waste produced. Commercial and industrial units may be assessed fees that are not greater than 50 times the fees assessed on a family residential unit.

(3) The commissioners may increase fees up to 10% a year by passing a resolution to establish the new fee rate. The commissioners may not approve a proposed fee increase of more than 10% a year unless notice of the proposed increase is given as provided in 7-13-4507(1) and (2) and opportunity for protest is provided as set forth in 7-13-4509 and 7-13-4510. If more than 20% of the owners of fee assessed units in the district protest, the fee increase may not be approved except through the referendum procedure provided for in 7-13-4512.

(4) Water withdrawals for irrigation and livestock use and related water discharges may not be assessed fees.

History: En. Sec. 18, Ch. 357, L. 1991.

7-13-4524. Procedure to collect fees. The month the local water quality district is created pursuant to 7-13-4513, the department of revenue or its agents shall ensure that the amount of the fees is placed on the county tax assessments for each fee-assessed unit. Unpaid fees are a lien on the fee-assessed unit and may be enforced as a lien for nonpayment of property taxes.

History: En. Sec. 19, Ch. 357, L. 1991.

7-13-4525. Disposition and administration of proceeds. (1) All fees and other money received by a local water quality district must be placed in a separate fund maintained by the county treasurer and must be used solely for the purpose for which the local water quality district was created.

(2) The commissioners shall draw warrants upon the fund on claims approved by the board of directors.

History: En. Sec. 20, Ch. 357, L. 1991.

7-13-4526 reserved.

7-13-4527. Creation of joint local water quality districts. (1) Joint local water quality districts are districts that encompass two or more counties or parts of counties.

(2) A joint local water quality district may be created if the commissioners of each affected county:

(a) create the district, following the procedures prescribed under 7-13-4504 through 7-13-4507 and 7-13-4509 through 7-13-4513; and

(b) appoint a joint board of directors that consists of at least five members and that is consistent with the requirement of 7-13-4528(2)(b), if applicable.

History: **En. Sec. 21, Ch. 357, L. 1991.**

7-13-4528. Composition of board of directors of joint district — terms. (1) The board of directors for a joint district consists of one commissioner from each county involved, one member from each incorporated city or town included in the district, one member from each county or city-county board of health, and if the joint district includes a substantial amount of land that is within a conservation district or districts, one conservation district supervisor.

(2) The remaining members of the joint board of directors are selected from interested citizens, as follows:

(a) persons whose residences or businesses are distributed equally throughout the district if counties are the only units of government participating in the joint district; or

(b) through mutual agreement of all commissioners and governing bodies of cities and towns participating in the district.

(3) Terms of appointed members are staggered and, after the initial terms, are for 3 years.

History: **En. Sec. 22, Ch. 357, L. 1991.**

7-13-4529. Administration of funds in joint districts. Fees and other money collected by a joint local water quality district may be administered by one county treasurer upon mutual agreement by the commissioners of the counties participating in a joint local water quality district.

History: **En. Sec. 23, Ch. 357, L. 1991.**

7-13-4530 through 7-13-4534 reserved.

7-13-4535. Referendum to abolish local water quality district or joint local water quality district — termination procedures. (1) A person owning a fee-assessed unit located within a local water quality district or a joint local water quality district may petition the commissioners of a local water quality district or the board of directors of a joint water quality district to submit a referendum to the registered voters residing in the district to terminate or abolish the district. The petition must be in writing and contain the signatures and addresses of 20% or more of the owners of fee-assessed units in the district. The petition requesting a referendum for termination or abolishment of a district must be delivered to the county clerk who shall endorse on it the date on which the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the owners of fee-assessed units located within the district, the county clerk shall notify the commissioners of a local water quality district or the board of directors of a joint water quality district.

(2) Upon receipt of a valid petition described in subsection (1), the commissioners of a local water quality district or the board of directors of a joint water quality district shall submit the referendum to the registered voters residing in the district in accordance with the provisions of 7-5-136.

History: **En. Sec. 1, Ch. 123, L. 1995.**

7-13-4536. Allocation of funds upon termination of local water quality district or joint local water quality district. (1) Except as provided in subsection (2), if a local water quality district or joint local water quality district is terminated, any funds held by the county treasurer pursuant to 7-13-4525 or 7-13-4529 must be deposited in the county general fund. In the case of a terminated joint local water quality district, any funds held by the county treasurer pursuant to 7-13-4529 must be allocated between the counties on the basis of the number of fee-assessed units located in each county.

(2) If the funds held by the county treasurer pursuant to 7-13-4525 or 7-13-4529 are derived from grants or gifts that restrict the use of those funds, the county treasurer shall return those funds to the grantor or donor.

History: **En. Sec. 2, Ch. 123, L. 1995.**

CHAPTER 14
TRANSPORTATION

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7-14-4720. Details of bonds.
7-14-4721. Assessments converted to bond liability.
7-14-4722. Treatment of installments due on bonds.
7-14-4723. Advance payment of installments.
7-14-4724 through 7-14-4730 reserved.
7-14-4731. Authorization for improvement districts to lease and operate offstreet parking facilities.
7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district.
7-14-4733. Authority to enter lease agreements.
7-14-4734. Expense estimate — assessments and tax levy.
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Part 48 — Air Transportation

7-14-4801. Acquisition of lots or lands for aircraft.

Part 49 — Easements and Rights-of-Way

7-14-4901. Purchase of historic easement across county land for benefit of private land.

Part 1
General Provisions Related to Local Government Transportation Services

7-14-101. Acquisition of property for controlled-access facility. The highway authorities of the counties, incorporated cities, and towns may, respectively or in cooperation with each other or the state, acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. The property rights may include rights of access, air, view, and light. The property rights may be acquired by gift, devise, purchase, or condemnation in the manner provided in Title 60, chapter 4, part 1, and Title 70, chapter 30.

History: En. Sec. 8-218, Ch. 197, L. 1965; R.C.M. 1947, 32-4018(part); amd. Sec. 8, Ch. 125, L. 2001.

Cross-References

Acquisition of right-of-way by county, 7-14-2107.
County roads — determination of damages, 7-14-2607.
Contracts between municipality and federal authorities, 7-14-4108.
Powers of highway authorities, 60-5-104.
Eminent domain, Title 70, ch. 30.

7-14-102. Allocation of state funds for public transportation. (1) (a) The department of transportation shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state that operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support must be determined by dividing the city's or district's expenditure of local revenue for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenue for public transportation operations for a fiscal year immediately following the end of the fiscal year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenue for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section must be paid by the department of transportation to the counties of the state in the manner provided in 15-70-101(2)(b). Money distributed to counties under this section must be used by the counties for highway or other transportation purposes.

(3) The department of transportation may adopt rules for the keeping of accounts for and otherwise implementing this section.

History: En. 11-4513 by Sec. 1, Ch. 515, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 11-4513; amd. Sec. 1, Ch. 559, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 238, L. 1983; amd. Secs. 3, 6, Ch. 512, L. 1991; amd. Sec. 15, Ch. 10, L. 1993; amd. Sec. 7, Ch. 18, L. 1995.

Cross-References

Urban transportation districts, Title 7, ch. 14, part 2.

7-14-103. Use of county road equipment in certain municipalities. The board of county commissioners of any county may in its discretion authorize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair, and maintenance of streets, avenues, and alleys within any incorporated city or town of population of 4,000 or less located in such county.

History: En. Sec. 1, Ch. 157, L. 1939; R.C.M. 1947, 16-1005.

7-14-104. Costs of discontinuation of trafficway. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under part 26 or part 41, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing.

History: En. 11-2806 by Sec. 1, Ch. 72, L. 1977; R.C.M. 1947, 11-2806.

7-14-105 through 7-14-110 reserved.

7-14-111. Transportation for senior citizens and persons with disabilities. (1) Subject to 15-10-420, a county, urban transportation district, or municipality may levy property taxes to fund special transportation services for senior citizens and persons with disabilities.

(2) The proceeds of the levy may be used to:

(a) contract with public or private transportation providers for services to senior citizens and individuals with disabilities; or

(b) augment or subsidize provisions for the transportation of senior citizens and individuals with disabilities provided by public transportation providers.

(3) If the taxing jurisdiction determines that it is not in the best interest of senior citizens and individuals with disabilities to use the tax levy as provided for in subsection (2), the taxing jurisdiction may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and individuals with disabilities.

(4) Counties, urban transportation districts, and municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and persons with disabilities and may create regional advisory committees to coordinate regional transportation services.

History: En. Sec. 1, Ch. 440, L. 1983; amd. Sec. 1, Ch. 375, L. 1987; amd. Sec. 3, Ch. 472, L. 1997; amd. Sec. 32, Ch. 584, L. 1999; amd. Sec. 40, Ch. 574, L. 2001.

7-14-112. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to 15-1-122(2)(e).

(2) Except as provided in subsection (6), the account must be used to provide operating funds or matching funds for operating grants pursuant to 49 U.S.C. 5311 to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs or matching funds for operating grants for the purposes described in 49 U.S.C. 5311 other than for transportation services for persons 60 years of age or older or persons with disabilities.

History: En. Sec. 1, Ch. 337, L. 2001; amd. Sec. 14, Ch. 114, L. 2003; amd. Sec. 7, Ch. 596, L. 2005; amd. Sec. 1, Ch. 209, L. 2007; amd. Sec. 2, Ch. 486, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 486 in (1) at end after "pursuant to" substituted "15-1-122(2)(e)" for "15-1-122(3)(e)". Amendment effective July 1, 2009.

7-14-113 through 7-14-119 reserved.

7-14-120. Transloading facility. (1) The department of transportation is authorized to issue to a local government a grant for construction of a demonstration truck/train transloading facility. The department shall solicit and accept proposals for no less than 2 months following the issuance of requests for proposals and shall award the grant primarily on the basis of simple payback in energy savings. The department shall also consider impact on freight rates, job creation, geographic proximity to raw materials, and access to new markets for Montana producers and shippers.

(2) The department of environmental quality is authorized to administratively transfer funds to the department of transportation for a demonstration truck/train transloading facility as provided in subsection (1).

History: En. Sec. 5, HB 621, L. 1987; amd. Sec. 6, Ch. 512, L. 1991; amd. Sec. 30, Ch. 418, L. 1995.

Part 2
Urban Transportation Districts

Part Cross-References

Municipal bus services, Title 7, ch. 14, part 44.

7-14-201. Purpose. This part authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

History: En. 11-4501 by Sec. 1, Ch. 355, L. 1975; R.C.M. 1947, 11-4501.

7-14-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of transportation of any district created under this part.

(2) "Commissioners" means the board of county commissioners or other governing body of a county.

(3) "District" means any transportation district created under this part.

History: En. 11-4502 by Sec. 2, Ch. 355, L. 1975; R.C.M. 1947, 11-4502.

7-14-203. Petition to create or enlarge an urban transportation district. Proceedings for creating or enlarging a transportation district may be initiated by a petition signed by not less than 20% of the registered electors who reside within the proposed district or the area to be added to an existing district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 338, Ch. 571, L. 1979; amd. Sec. 1, Ch. 177, L. 1997.

7-14-204. Details relating to petition. The petition under 7-14-203 must include a map showing the limits of the proposed district or the area to be added to an existing district and must be in the form provided in Title 13, chapter 27.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 339, Ch. 571, L. 1979; amd. Sec. 2, Ch. 177, L. 1997.

7-14-205. Petition to be filed with election administrator — certificate. (1) The complete petition must be filed with the election administrator.

(2) The election administrator shall, within 30 days, carefully examine the petition and attach to it a certificate under the administrator's official signature and seal of office. The certificate must set forth:

(a) the total number of individuals who are registered electors within the proposed transportation district; and

(b) which and how many of the individuals whose names are on the petition are qualified to sign the petition.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 340, Ch. 571, L. 1979; amd. Sec. 573, Ch. 61, L. 2007.

7-14-206. Effect of insufficient number of signatures. If the petition is found to contain less than 20% of the signatures of the registered electors of the transportation district, the petition shall be declared void.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 341, Ch. 571, L. 1979.

7-14-207. Presentation of petition to board of county commissioners — hearing required. (1) If the petition contains the signatures of 20% of the qualified electors of the proposed transportation district or the area proposed to be added to an existing district, the county clerk shall present the petition and the county clerk's certificate to the commissioners at their first meeting held after the county clerk has attached the certificate to the petition.

(2) Upon receipt of the petition from the county clerk, the commissioners shall examine the petition and shall by resolution call for a public hearing on the creation of the district or the enlargement of the district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(2), (3); amd. Sec. 3, Ch. 177, L. 1997.

7-14-208. Notice of hearing. (1) A notice of the public hearing required by 7-14-207 must be published as provided in 7-1-2121.

(2) The notice must state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed district or addition.

History: En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(2); amd. Sec. 4, Ch. 177, L. 1997; amd. Sec. 44, Ch. 354, L. 2001.

7-14-209. Hearing on petition. (1) At the time fixed for the public hearing required by 7-14-207, the commissioners shall hear all testimony offered in support of and in opposition to any petition for the creation of the district or addition to a district.

(2) The hearing may be adjourned from time to time for the determination of additional information or hearing petitioners or objectors, but adjournment may not exceed 2 weeks after the date originally noticed and published for the hearing.

History: En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(1); amd. Sec. 5, Ch. 177, L. 1997.

7-14-210. Election on question of creating urban transportation district or addition to a district. (1) The commissioners, upon completion of the public hearing required by 7-14-207, shall proceed by resolution to refer the creation of the district or addition to a district to the persons qualified to vote on the proposition.

(2) The commissioners may designate in their resolution whether a special election is to be held in conjunction with a regular or primary election, whether the matter is to be determined at the next general election, or whether the matter is to be determined by a mail ballot election held pursuant to the provisions of Title 13, chapter 19. If a special election is ordered, the order must specify the date for the election and the voting places and the commissioners shall appoint and designate election judges and clerks.

History: En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part); amd. Sec. 47, Ch. 387, L. 1995; amd. Sec. 6, Ch. 177, L. 1997.

7-14-211. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots shall contain the words:

Transportation district — YES

Transportation district — NO

History: En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part); amd. Sec. 342, Ch. 571, L. 1979.

7-14-212. District to be governed by transportation board. (1) The district must be governed by a transportation board. The commissioners and the governing bodies of each city or town included or partially included in the district shall determine if the board is to be elected or appointed.

(2) The commissioners and the governing body by resolution shall:

(a) determine the number of board members;

(b) set the term of office;

(c) determine the makeup of the board with respect to the number of appointed members that will represent each county, city, or town;

(d) establish a procedure for selecting the initial members of an elected board. The initial members shall serve until the first county general election after their appointment.

(e) determine the number of candidates for an elected board whose names must be placed on the ballot in the county general election, based on the results of the primary election; and

(f) establish a procedure for filling vacancies on the board, including a provision for public notice.

(3) The commissioners and the governing body may, at any time, adopt a resolution changing the method by which the members of the board are selected. The resolution must contain a provision that the term of office of the current members of the board may not be shortened.

(4) If the board is elected and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board shall declare elected by acclamation each candidate who filed a nominating petition for a position.

(5) If there are no nominees for an elective office of a member of the board, the vacancy must be filled as provided in subsection (2)(f).

(6) A member of the board taking office pursuant to subsection (4) or (5) serves a term of office as if elected to that office.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 1, Ch. 608, L. 1993; amd. Sec. 4, Ch. 254, L. 1999.

7-14-213. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-214. Election of members of transportation board. Any registered elector in the district may file a petition of candidacy with the election administrator of the county where the district is located. A filing fee may not be required. All candidates shall file a nonpartisan petition for candidacy containing the signatures of not less than 25 registered electors of the district. Except for the number of petition signers required, the petition shall be filed as provided in 13-14-113.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 343, Ch. 571, L. 1979; amd. Sec. 1, Ch. 117, L. 1981; amd. Sec. 2, Ch. 608, L. 1993.

7-14-215. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-216. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 1, Ch. 601, L. 1981.

7-14-217. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 2, Ch. 601, L. 1981.

7-14-218. Compensation of transportation board members. The board members shall serve without pay except for necessary transportation expenses.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-219. Powers of transportation board. The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the transportation district.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

Cross-References

Municipal bus services, Title 7, ch. 14, part 44.

7-14-220. Employment of administrative officer. The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

History: **En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(2).**

7-14-221. Area of service. The district shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate.

History: **En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).**

7-14-222 through 7-14-230 reserved.

7-14-231. Transportation district budget. The board shall annually present its budget to the commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: **En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).**

7-14-232. Mill levy authorized. Subject to 15-10-420, the commissioners shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within the transportation district sufficient to operate the district, taking into account the amount requested by the board.

History: **En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part); amd. Sec. 33, Ch. 584, L. 1999; amd. Sec. 41, Ch. 574, L. 2001.**

Cross-References

Limitation on property taxes, Title 15, ch. 10, part 4.

7-14-233. Collection of tax — role of county treasurer. (1) The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer.

(3) The county treasurer shall be, ex officio, the treasurer for the transportation district and shall keep a detailed account of:

(a) all tax money paid into the fund;

(b) all other money from any source received by the district; and

(c) all payments and disbursements from the fund.

History: **En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).**

7-14-234. Warrants to be used for payments. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

History: **En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).**

7-14-235. Transportation district bonds authorized. A transportation district may borrow money by the issuance of general obligation or revenue bonds or a combination thereof to provide funds for the district.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part).**

7-14-236. Limitation on bonded indebtedness. The amount of bonds issued to provide funds for the district and outstanding at any time may not exceed 1.51% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part); amd. Sec. 50, Ch. 614, L. 1981; amd. Sec. 15, Ch. 29, L. 2001.**

7-14-237 through 7-14-240 reserved.

7-14-241. Procedure to be included in district or to remove an addition to a district.

(1) A real property owner may petition to have that owner's property included in a district. The addition of the real property owner's property must be approved by a majority vote of the transportation board.

(2) An area added to a district pursuant to this part may be removed if the area does not directly receive transportation services from the district and 51% of the qualified voters in the area sign a petition requesting to be removed from the district. The removal of the area is effective 60 days after submission of the petition to the transportation board unless within that time, it is determined that the petition contains insufficient signatures for removal of the area.

An insufficient petition must be returned to the petitioners, who may resubmit a corrected version within 90 days.

(3) (a) All property within any addition to a district is subject to all existing indebtedness of the district.

(b) Property within an area removed from a district is not subject to the district's existing indebtedness if the area was added to the district within 5 years of the date on which the petition for removal was submitted to the transportation board.

History: En. 11-4511 by Sec. 11, Ch. 355, L. 1975; R.C.M. 1947, 11-4511; amd. Sec. 1, Ch. 374, L. 1987; amd. Sec. 1, Ch. 245, L. 1995; amd. Sec. 7, Ch. 177, L. 1997.

7-14-242. Petition for dissolution of district. Any transportation district may be dissolved upon presentation to the county commissioners of a petition signed by at least 51% of the qualified voters of such district.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-243. Examination of petition — hearing. (1) Upon the filing of such petition, the commissioners shall carefully examine the petition.

(2) (a) If it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the commissioners shall by resolution call for a public hearing on the dissolution of such transportation district.

(b) If such petition is found by the commissioners to be lacking in the number of signatures, the commissioners shall declare the petition void.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-244. Notice of hearing on question of dissolution of district. (1) A notice of the hearing required by 7-14-243(2)(a) must be published as provided in 7-1-2121.

(2) The notice must state the time, date, place, and purpose of the hearing.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(2); amd. Sec. 45, Ch. 354, L. 2001.

7-14-245. Hearing on question of dissolution of district — decision. (1) If upon such hearing the commissioners find that the district is not indebted beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district.

(2) Such order shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing the order of dissolution, provided that at or before such time, the board of said district certifies to the county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with proof thereof.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-246. Distribution of district assets after dissolution. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall be evenly divided between the county and any cities within or partially within the dissolved district.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

Part 3
Local Option Motor Fuel Excise Tax

7-14-301. Local option motor fuel excise tax authorized — definitions. (1) A motor fuel excise tax may be imposed within a county:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per gallon and may not exceed 2 cents per gallon. The tax must be imposed upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads.

(3) The initiative or referendum must specify that the tax is to be collected by the county treasurer.

(4) The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of the initiative or referendum.

(5) By the 25th day of each month, each retail seller of gasoline shall render a monthly statement to the county treasurer of all gasoline sold during the preceding calendar month in the county in which it is sold to the ultimate consumer and other information that the county treasurer requires in order to administer the motor fuel excise tax.

(6) The county treasurer shall establish procedures to provide a refund to a person who has paid the tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(7) In this part, the terms "gasoline", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201.

History: En. Sec. 1, Ch. 621, L. 1979; amd. Sec. 1, Ch. 572, L. 1981; amd. Sec. 1, Ch. 381, L. 1983; amd. Sec. 8, Ch. 18, L. 1995; amd. Sec. 1, Ch. 539, L. 2005.

Cross-References

Initiative procedure, 7-5-132 through 7-5-137.

7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 may use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) One percent of the motor fuel excise tax revenue collected in a county is to be reimbursed to the retail seller for the cost of compliance with this part.

History: En. Sec. 2, Ch. 621, L. 1979; amd. Sec. 2, Ch. 572, L. 1981; amd. Sec. 2, Ch. 539, L. 2005.

Cross-References

Financial management of county roads, Title 7, ch. 14, part 25.

7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel excise tax. (1) A county that imposes a motor fuel excise tax shall establish a motor fuel excise tax account. When allocating the tax under subsection (2), county commissioners shall take into account any funding requested by a transportation district in the county.

(2) Revenue derived from a motor fuel excise tax imposed by a county under 7-14-301 must be deposited into the county's motor fuel excise tax account and apportioned among the county and municipalities in the county according to one of the following methods that is mutually agreed upon by the county and municipalities:

(a) by distributing 50% to the county and 50% to the incorporated cities and towns within the county apportioned on the basis of population. The distribution to a city or town must be determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county must be determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(b) by basing the distribution upon the proportion of road miles outside municipalities and street miles within each municipality as a ratio of total road and street miles in the county, using the most recent public road miles available from the department of transportation; or

(c) by using any other method agreed upon by the affected county and municipalities as determined by an interlocal agreement.

(3) All taxes, interest, and penalties collected by the county treasurer under this part must be promptly deposited into the account established in subsection (1).

History: En. Sec. 3, Ch. 621, L. 1979; amd. Sec. 3, Ch. 572, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 539, L. 2005.

7-14-304. Collection of delinquent tax — interest and penalty — statute of limitations. (1) Motor fuel taxes imposed pursuant to 7-14-301 and collected by a retail seller but not transmitted to the county treasurer are delinquent after the date that they are due to the county treasurer and become a lien upon all real and personal property owned by the retail seller in the county. The county shall collect the delinquent motor fuel taxes in the manner that delinquent personal property taxes are collected.

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery.

History: En. Sec. 4, Ch. 621, L. 1979; amd. Sec. 4, Ch. 572, L. 1981; amd. Sec. 4, Ch. 539, L. 2005.

Cross-References

Liens, Title 71, ch. 3, part 1.

Parts 4 through 9 reserved

Part 10

Transportation Improvement Authorities

7-14-1001. Purpose. The purpose of a transportation improvement authority is to blend the interests of local, state, and federal governments with the interests of the general public and the business community to build, modify, or improve transportation facilities and systems within its jurisdiction.

History: En. Sec. 1, Ch. 219, L. 2003.

7-14-1002. Transportation improvement authority. (1) A county and a municipality within a county may, by joint resolution, create a transportation improvement authority authorized to exercise its functions upon the appointment and qualification of the first commissioners.

(2) (a) Except as provided in subsection (3), the resolution creating the transportation improvement authority must create a board of nine commissioners appointed as follows:

(i) two county officials appointed by the county commissioners;

(ii) two public members appointed by the county commissioners;

(iii) two municipal officials appointed by the governing body of the municipality;

(iv) two public members appointed by the governing body of the municipality; and

(v) one member appointed by the governor.

(b) The public members must be knowledgeable about transportation issues.

(c) The resolution must state the terms of the commissioners and their compensation, if any.

(3) A transportation improvement authority may be increased to serve one or more additional counties or municipalities if each additional county or municipality, each county and municipality included in the authority, and the commissioners of the authority adopt a joint resolution consenting to the increase. The number of additional commissioners to be appointed must be provided for in the joint resolution.

(4) A transportation improvement authority may be dissolved if each municipality and county included in the authority and the commissioners of the authority consent to the dissolution. Provisions must be made for the retention or disposition of the authority's assets and liabilities.

(5) A county or municipality may not adopt a resolution authorized by this section without a public hearing. Notice must be given as provided in 7-1-2121 or 7-1-4127.

History: En. Sec. 2, Ch. 219, L. 2003.

7-14-1003. Commissioners. (1) The powers of each transportation improvement authority are vested in the commissioners. A majority of the commissioners of an authority constitute a quorum for the purpose of conducting the business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of the majority of the commissioners present.

(2) There must be elected a presiding officer and vice presiding officer from among the commissioners. An authority shall employ an executive director and may employ other personnel as necessary. An authority shall determine the qualifications, duties, and compensation of its employees.

(3) Each commissioner shall hold office until a successor is appointed and has qualified. The certificate of the appointment or reappointment of a commissioner must be filed with the authority.

History: En. Sec. 3, Ch. 219, L. 2003.

7-14-1004. Cooperation of county and municipality. For the purpose of cooperating in the planning, construction, or operation of transportation facilities, a county and a municipality for which a transportation improvement authority has been created may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or required by law to be used by the county or municipality for transportation purposes be transferred to the authority as the funds become available;

(3) furnish facilities or improvements that the county or municipality is empowered to provide in connection with the transportation facilities;

(4) dedicate, sell, convey, or lease an interest in property or grant easements, licenses, or other rights and privileges to the authority;

(5) do all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, construction, or operation of transportation facilities; and

(6) enter into agreements with the authority respecting action to be taken by the county and the municipality pursuant to the provisions of this section.

History: En. Sec. 4, Ch. 219, L. 2003.

7-14-1005. General powers of the authority. A transportation improvement authority has all the powers necessary to carry out the purposes of this part, including the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take other action as may be necessary to carry out the purposes of this part;

(3) receive and disburse federal, state, and other public or private funds made available by grant, loan, contribution, or other source to accomplish the purposes of this part. Federal money must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) acquire by purchase, gift, devise, lease, or other means real or personal property or any interest in property; and

(5) sell, lease, or otherwise dispose of real or personal property acquired pursuant to this part. The disposal must be in accordance with the laws of this state governing the disposition of public property.

History: En. Sec. 5, Ch. 219, L. 2003.

7-14-1006. Rules. (1) A transportation improvement authority may adopt, amend, and repeal reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance, as well as for the management, governance, and use of a transportation facility owned by the authority or under its control.

(2) A rule, order, or standard prescribed by the authority may not be inconsistent with or contrary to an act of the congress of the United States or a regulation promulgated or standard established pursuant to an act of congress.

(3) The authority shall keep a copy of its rules on file for public inspection at the principal office of the authority.

History: En. Sec. 6, Ch. 219, L. 2003.

7-14-1007. Tax exemption. Property in this state acquired for a transportation improvement authority for transportation purposes pursuant to the provisions of this part and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

History: En. Sec. 7, Ch. 219, L. 2003.

Part 11
Port Authorities

Part Cross-References

Tax exemption for industrial park owned by port authority, 15-24-1902.
Airport authorities, Title 67, ch. 11.

7-14-1101. Local port authority. (1) Any county or municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a local port authority, authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof. Such a governing body may by resolution determine to exercise any or all powers granted to such authorities in this part, unless such powers have been conferred upon a local or regional port authority.

(2) Upon the adoption of a resolution creating a local port authority, the governing body of the county or municipality shall, pursuant to the resolution, appoint or, at the option of the governing body, elect, as provided in 7-14-1106, not less than five persons as commissioners of the authority. The commissioners who are first appointed must be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner must be appointed or elected for a term of 5 years, except that vacancies occurring other than by expiration of a term must be filled for the unexpired term by the governing body.

History: En. Sec. 1, Ch. 456, L. 1985; amd. Sec. 1, Ch. 640, L. 1991.

7-14-1102. Regional port authority. (1) Two or more local governments may by joint resolution create a public body, corporate and politic, to be known as a regional port authority. The resolution creating a regional port authority must create a board of not less than five commissioners. The number to be appointed, their term, and their compensation, if any, must be provided for in the resolution. Each regional port authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure.

(2) A regional port authority may be increased from time to time to serve one or more additional counties or municipalities if each additional local government, each of the local governments then included in the regional authority, and the commissioners of the regional authority, respectively, adopt a joint resolution consenting to the increase. However, if a local port authority for any local government seeking to be included in the regional authority is then in existence, the commissioners of the local authority must consent to the inclusion of the county or municipality in the regional authority; upon the inclusion of the local government in the regional authority, all rights, contracts, obligations, and real and personal property of the local authority must be in the name of and vest in the regional authority.

(3) A regional port authority may be decreased if each of the local governments then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A county or municipality may not adopt any resolution authorized by this section without a public hearing. Notice must be given as provided in 7-1-2121.

(5) For the purpose of this part, a regional port authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive port zoning regulations, as provided by the laws of this state.

History: En. Sec. 2, Ch. 456, L. 1985; amd. Sec. 46, Ch. 354, L. 2001.

7-14-1103. Commissioners. (1) The powers of each authority are vested in the commissioners of the authority. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There must be elected a presiding officer and vice presiding officer from among the commissioners. An authority may employ an executive director, secretary, technical experts, and other officers, agents, and employees, permanent and temporary, that it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees the powers or duties that it considers proper.

(3) A commissioner of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of duties. Each commissioner shall hold office until a successor has been appointed or elected and has qualified. The certificates of the appointment, reappointment, or election of commissioners must be filed with the authority.

History: En. Sec. 3, Ch. 456, L. 1985; amd. Sec. 3, Ch. 640, L. 1991; amd. Sec. 574, Ch. 61, L. 2007.

7-14-1104. Purpose — public and governmental functions. (1) The purposes of a port authority are to:

(a) promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;

(b) endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce;

(c) cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state;

(d) support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

(2) The acquisition of any land or interest in land pursuant to this part, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of port authority facilities, and the exercise of any powers granted to port authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity. A port authority may pledge, lease, sell, or mortgage all or any part of its facilities to secure bonds under this part as provided in 7-14-1133.

History: En. Sec. 4, Ch. 456, L. 1985; amd. Sec. 1, Ch. 507, L. 1989; amd. Sec. 4, Ch. 640, L. 1991; amd. Sec. 1, Ch. 22, L. 1995.

7-14-1105. Cooperation of county or municipality. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of ports and facilities pursuant to this part, any county or municipality for which an authority has been created upon such terms, with or without consideration, as it may determine may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or to become available to or required by law to be used by the county or municipality for port purposes be transferred or paid directly to the port authority as such funds become available to the county or municipality;

(3) cause water, sewer, or drainage facilities or any other facilities that it is empowered to provide to be furnished adjacent to or in connection with such ports or facilities;

(4) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or any other rights or privileges therein to the authority;

(5) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such port or facilities;

(6) do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of ports and facilities; and

(7) enter into agreements with the authority respecting action to be taken by the county or municipality pursuant to the provisions of this section.

History: En. Sec. 5, Ch. 456, L. 1985.

7-14-1106. Election of local port authority commissioners. (1) Any registered elector in the county or municipality in which the local port authority is located may file a petition of candidacy with the election administrator. The petition must contain the signatures of not less than 25 registered electors of the county or municipality. The petition must be filed at least 75 days before the election day.

(2) The election must be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(3) If no nomination petitions are filed for one or more commissioner offices, the appropriate local governing body shall appoint one or more commissioners as necessary to fill those offices.

History: En. Sec. 2, Ch. 640, L. 1991.

Cross-References

Times for holding general elections, 13-1-104.

Manner of conducting general elections for political subdivisions required to hold annual elections, 13-1-401.

7-14-1107 through 7-14-1110 reserved.

7-14-1111. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this part, including but not limited to the power to:

(1) subject to 15-10-420, request annually the amount of tax to be levied by the governing body for port purposes, which request the governing body may in its discretion approve for port purposes;

(2) sue and be sued, have a seal, and have perpetual succession;

(3) execute contracts and other instruments and take other action that may be necessary or convenient to carry out the purposes of this part;

(4) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect transportation, storage, or other facilities. For these purposes an authority may, by purchase, gift, devise, lease, or otherwise, acquire real or personal property or any interest in property, including easements.

(5) establish comprehensive port zoning regulations in accordance with the laws of this state;

(6) acquire, by purchase, gift, devise, lease, or otherwise, existing transportation, storage, or other facilities that may be necessary or convenient to carry out the purposes of this part. However, an authority may not acquire or take over any transportation, storage, or other facility owned or controlled by another authority, county, municipality, or public agency without the consent of the authority, county, municipality, or public agency.

(7) provide financial and other support to organizations in its jurisdiction, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4, whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standards of living of citizens of the state.

History: En. Sec. 6, Ch. 456, L. 1985; amd. Sec. 2, Ch. 507, L. 1989; amd. Sec. 5, Ch. 640, L. 1991; amd. Sec. 34, Ch. 584, L. 1999.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-14-1112. Rules. An authority may adopt, amend, and repeal such reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance as well as for the management, governance, and use of any transportation, storage, or other facility owned by it or under its control. No rule, order, or standard prescribed by the commission may be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority a copy of all its rules for public inspection.

History: En. Sec. 7, Ch. 456, L. 1985; amd. Sec. 3, Ch. 507, L. 1989; amd. Sec. 6, Ch. 640, L. 1991.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-14-1113 through 7-14-1120 reserved.

7-14-1121. Supplementary powers. In addition to the general and special powers conferred by this part, each authority may exercise all powers incidental to the exercise of such general and special powers.

History: En. Sec. 8, Ch. 456, L. 1985.

7-14-1122 through 7-14-1124 reserved.

7-14-1125. Granting of operation and use privileges. (1) In connection with the operation of a transportation, storage, or other facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the port authority facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, services, or facilities at the port authority facility; and

(c) making available services to be furnished by the authority or its agents at the transportation, storage, or other facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority.

History: En. Sec. 9, Ch. 456, L. 1985; amd. Sec. 7, Ch. 640, L. 1991.

7-14-1126. Port property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 7-14-1136, an authority may sell, lease, or otherwise dispose of any transportation, storage, or other facility or other property or portion of or interest in the facility or property acquired pursuant to this part. The disposal by sale, lease, or otherwise must be in accordance with the laws of this state governing the disposition of other public property, unless a sale, lease, mortgage, or other disposition is made under 7-14-1133 to secure bonds of the authority.

History: En. Sec. 10, Ch. 456, L. 1985; amd. Sec. 8, Ch. 640, L. 1991; amd. Sec. 2, Ch. 22, L. 1995.

7-14-1127 through 7-14-1130 reserved.

7-14-1131. Municipal tax levy. Subject to 15-10-420, the port authority may request annually from the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount requested, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. The municipality shall collect the taxes requested by a port authority that it has authorized in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of the taxes when and as paid to the port authority must be deposited in a special account or accounts in which other revenue of the authority is deposited and may be expended by the authority as provided for in this part. Prior to the issuance of bonds under 7-14-1133 and 7-14-1134, the port authority or the municipality may by resolution covenant and agree that the total amount of taxes then authorized by law, or the portion of the taxes that may be specified by the resolution, will be requested, levied, and deposited annually as provided in this section until the bonds and interest are fully paid.

History: En. Sec. 11, Ch. 456, L. 1985; amd. Sec. 9, Ch. 640, L. 1991; amd. Sec. 35, Ch. 584, L. 1999; amd. Sec. 42, Ch. 574, L. 2001.

7-14-1132. County tax levy. In counties supporting ports of port authorities, a levy authorized in 67-10-402 may be made for such purposes.

History: En. Sec. 12, Ch. 456, L. 1985.

7-14-1133. Bonds and obligations. (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds, including refunding bonds, for any of its corporate purposes. The bonds may be in the form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

(a) any port or transportation and storage facility;

(b) taxes levied pursuant to 7-14-1131 or 67-10-402;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then outstanding bonds for which revenue from the same source is pledged exceeds the amount of revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from revenue of the authority or from particular port, transportation, storage, or other facilities of the authority. The bonds must state on their face the applicable limitations or restrictions regarding the source from which principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-2110(2)(a).

(5) (a) For the security of bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

(b) As further security for the bonds, the authority, with the approval of the governing body of the county or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its port, transportation, storage, or other facilities, whether or not the facilities are financed by the bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the authority consider advisable. The provisions must be consistent with this part and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged property or collateral in accordance with the proceedings or the provisions of the instrument.

(6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority revenue, including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide financial and other support to private development organizations, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4. The credit of the state, county, or municipal governments or their agencies or authorities may not be pledged to provide financial support to the development organizations.

History: **En. Sec. 13, Ch. 456, L. 1985; amd. Sec. 22, Ch. 370, L. 1987; amd. Sec. 4, Ch. 507, L. 1989; amd. Sec. 10, Ch. 640, L. 1991; amd. Sec. 3, Ch. 22, L. 1995.**

7-14-1134. Method of funding deficiency. (1) Subject to the conditions stated in this section, the governing body of a county or of a municipality having a population in excess of 10,000 may by resolution covenant that if at any time all revenue, including taxes, appropriated and collected for bonds issued pursuant to this part is insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county or municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county or municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to this part, the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the local governments may determine.

(2) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) (a) A resolution is not effective until the question of its approval has been submitted to the qualified electors of the local government at an election called for that purpose by the governing body of the local government and held as provided in 15-10-425 and the question is approved by a majority of the electors voting.

(b) The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the local government may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section. The local government or authority may issue bonds under this part payable solely from the sources referred to in 7-14-1133(1).

History: En. Sec. 14, Ch. 456, L. 1985; amd. Sec. 48, Ch. 387, L. 1995; amd. Sec. 13, Ch. 495, L. 2001; amd. Sec. 43, Ch. 574, L. 2001.

7-14-1135. Debt service fund. A port authority may create a debt service fund and accumulate therein a sum determined by the governing body, together with interest thereon, for the use, repairs, maintenance, and capital outlays of a port.

History: En. Sec. 15, Ch. 456, L. 1985.

7-14-1136. Federal and state money. An authority may accept, receive, receipt for, and spend federal and state money and other public or private money made available by grant or loan to accomplish any of the purposes of this part. All federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

History: En. Sec. 16, Ch. 456, L. 1985.

7-14-1137. Tax exemption. Any property in this state acquired by an authority for port purposes pursuant to the provisions of this part, any income derived by the authority from the ownership, operation, or control thereof, including property acquired, and income derived from organizations, including corporations organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, are exempt from taxation to the same extent as other property used for public purposes.

History: En. Sec. 17, Ch. 456, L. 1985; amd. Sec. 5, Ch. 507, L. 1989.

Cross-References

Tax exemption for industrial park owned by port authority, 15-24-1902.

Parts 12 through 15 reserved

Part 16
Railway Authorities

7-14-1601. Definitions. As used in this part, the following definitions apply:

(1) "Authority" means a rail authority as provided in this part.

(2) "Board" means a board of county commissioners.

(3) "Common carrier" means a railroad engaged in transportation for hire.

(4) "Directors" means the directors of the rail authority.

History: En. Sec. 1, Ch. 333, L. 1993.

7-14-1602. Purpose — public and governmental functions. (1) The purpose of an authority is to provide for the preservation and improvement of abandoned rail service for agriculture, industry, or passenger traffic and to provide for the preservation of abandoned railroad right-of-way for future transportation uses, when determined to be practicable and necessary for the public welfare, particularly in the case of the abandonment of rail lines.

(2) The acquisition of land pursuant to this part; the planning, acquisition, establishment, construction, improvement, maintenance, equipment, operation, regulation, and protection of authority facilities; and the exercise of powers granted to authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for public purpose, and matters of public necessity. All land and other property acquired and used by or on behalf of an authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity.

History: En. Sec. 2, Ch. 333, L. 1993.

7-14-1603 through 7-14-1610 reserved.

7-14-1611. Resolution of intention to create rail authority. (1) A board of county commissioners may create an authority encompassing an entire county or a portion of a county. Before creating an authority, the board shall pass a resolution of intention.

(2) The resolution must state:

(a) the proposed name of the authority;

(b) the proposed boundaries of the authority; and

(c) the number of directors of the authority.

History: En. Sec. 3, Ch. 333, L. 1993.

7-14-1612. Notice of resolution — hearing. (1) The text of the resolution referred to in 7-14-1611 must be published as provided in 7-1-2121.

(2) At the time for the hearing, the board shall hear testimony for and against the creation of the authority. The hearing may be adjourned from time to time for the determination of additional information or for hearing proponents or opponents, but an adjournment may not exceed 2 weeks after the date originally published for the hearing.

History: En. Sec. 4, Ch. 333, L. 1993.

7-14-1613. County rail authority. (1) The board, upon completion of the public hearing, may pass a resolution creating an authority.

(2) At the same time, the board shall appoint five persons as directors of the authority. A director shall hold office for 2 years and until a successor is appointed. Three of the directors first appointed shall hold office for 1 year. A vacancy occurring other than by expiration of a term must be filled for the unexpired term by the board.

(3) A director must reside within the boundaries of the authority.

History: En. Sec. 5, Ch. 333, L. 1993.

7-14-1614 through 7-14-1620 reserved.

7-14-1621. Regional rail authority. (1) Two or more counties may by joint resolution create a regional rail authority. The resolution creating a regional rail authority must create a regional rail authority board of not less than five directors. The number of directors to be appointed, their term of office, and their qualifications must be provided for in the resolution.

(2) The text of the resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed authority lies. A county may not adopt a resolution authorized by this section without a public hearing.

(3) After passage of the resolution by the board of each county with territory included in the authority, the boards shall jointly appoint the initial directors of the regional rail authority.

History: En. Sec. 6, Ch. 333, L. 1993.

7-14-1622. Directors. (1) The powers of an authority are vested in the directors of the authority. A majority of the directors constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the directors present.

(2) There must be elected a presiding officer, a vice presiding officer, a treasurer, and a secretary from among the directors. An authority may employ an executive director, technical experts, and other officers, agents, and employees, permanent and temporary, as necessary and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees powers or duties as it considers proper.

(3) A director of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the performance of the director's duties.

History: En. Sec. 7, Ch. 333, L. 1993.

7-14-1623. Cooperation of county. For the purpose of cooperating in the planning, construction, or operation of railroads pursuant to this part, a county for which an authority has been created may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or required by law to be used by the county for railroad purposes be transferred to the authority as the funds become available to the county;

(3) furnish facilities or improvements that it is empowered to provide in connection with the railroad or railroad facilities;

(4) dedicate, sell, convey, or lease its interest in property or grant easements, licenses, or other rights or privileges to the authority;

(5) do all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of railroads and railroad facilities; and

(6) enter into agreements with the authority respecting action to be taken by the county pursuant to the provisions of this section.

History: En. Sec. 8, Ch. 333, L. 1993.

7-14-1624. General powers of authority. An authority has all the powers necessary to carry out the purposes of this part, including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take other action as may be necessary to carry out the purposes of this part;

(3) receive and disburse federal, state, and other funds, public or private, made available by grant, loan, contribution, tax levy, or other source to accomplish the purposes of this part. Federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) sell, lease, or otherwise dispose of real or personal property acquired pursuant to this part. The disposal must be in accordance with the laws of this state governing the disposition of other public property.

History: En. Sec. 9, Ch. 333, L. 1993.

7-14-1625. Railroad acquisition and operation — permits — eminent domain. (1) Within the boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain, equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, that may be necessary to carry out the provisions of this part.

(2) The authority may apply to a public agency for permits and approvals required for the acquisition and operation of a railroad and take all actions necessary to comply with conditions required in a permit or approval.

(3) The authority may acquire property for a public use, as provided in Title 70, chapter 30, in the same manner as a county, except that the authority does not have the power of eminent domain with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation unless the interstate commerce commission or another entity with the power to make the finding has found that the public convenience and necessity permit discontinuance of rail service on the property.

History: En. Sec. 10, Ch. 333, L. 1993; amd. Sec. 9, Ch. 125, L. 2001.

7-14-1626 through 7-14-1630 reserved.

7-14-1631. Rules. An authority may adopt, amend, and repeal reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance as well as for the management, governance, or use of a railroad or railroad facility owned by or under its control. A rule, order, or standard prescribed by the authority may not be inconsistent with or contrary to an act of the congress of the United States or a regulation promulgated or standard established pursuant to an act of congress. The authority shall keep a copy of its rules on file for public inspection at the principal office of the authority, as determined by the directors.

History: En. Sec. 11, Ch. 333, L. 1993.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-14-1632. Mill levy authorized. The authority may certify annually to the board of county commissioners the amount of money necessary for the operation of the authority. Upon approval by the electorate, the board shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within the boundaries of the authority clearly sufficient to raise the amount certified by the authority.

History: En. Sec. 12, Ch. 333, L. 1993; amd. Sec. 44, Ch. 574, L. 2001.

Cross-References

Limitation on property taxes, Title 15, ch. 10, part 4.

7-14-1633. Election required to impose mill levy. (1) Before the levy provided for in 7-14-1632 may be made, the question must be submitted to a vote of the people at an election held pursuant to 15-10-425.

(2) Notice of the election, clearly stating the amount and the purpose of the levy, must be given, and the election must be held and conducted and the returns must be made in the manner prescribed by law for the submission of questions to the electors under the general election laws.

History: En. Sec. 13, Ch. 333, L. 1993; amd. Sec. 14, Ch. 495, L. 2001; amd. Sec. 45, Ch. 574, L. 2001.

7-14-1634. Collection of tax and disposition of funds. (1) The procedure for the collection of the tax must be in accordance with the existing laws of the state of Montana.

(2) The proceeds from the tax levy must be deposited in a special account in which other revenues of the authority are deposited and may be expended by the authority as provided for in this part.

History: En. Sec. 14, Ch. 333, L. 1993.

7-14-1635. Contracts for operation and use of facilities. (1) In connection with the operation of a railroad or a railroad facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements:

(a) granting the privilege of operating or using the railroad or railroad facility;

(b) leasing a railroad for operation by the lessee. However, a person may not be authorized to operate a railroad other than as a common carrier.

(c) granting the privilege of supplying goods, commodities, services, or facilities along rail lines or in or upon other property; and

(d) making available services to be furnished by the authority or its agents.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees that must be reasonable and uniform for the same class of privilege or service and that must be established with regard to the property and improvements used and the expenses of operation to the authority.

(3) The authority may remit funds available for investment to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

History: En. Sec. 15, Ch. 333, L. 1993.

7-14-1636. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

(a) a railroad;

(b) taxes levied pursuant to 7-14-1632;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of

principal and interest to become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Bonds issued by an authority pursuant to this part may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-2110(2)(a).

(5) For the security of the bonds, the authority may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

History: En. Sec. 16, Ch. 333, L. 1993.

7-14-1637. Debt service fund. An authority may create a debt service fund and accumulate in the fund a sum determined by the directors, together with the interest on the sum, for the use, repair, maintenance, and capital outlay expenses of a railroad.

History: En. Sec. 17, Ch. 333, L. 1993.

7-14-1638. Tax exemption. Property in this state acquired by an authority for railroad purposes pursuant to the provisions of this part and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

History: En. Sec. 18, Ch. 333, L. 1993.

7-14-1639. Procedure to enlarge authority. (1) The directors of an authority may by resolution enlarge the boundaries of the authority in accordance with the procedures of notice and hearing in 7-14-1612.

(2) The property within an addition to the authority is subject to the existing indebtedness of the authority.

History: En. Sec. 19, Ch. 333, L. 1993.

Parts 17 through 20 reserved

Part 21
General Provisions Related to County Roads

7-14-2101. General powers of county relating to roads and bridges — definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:

(a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(b) "County road" means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners;

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners;

(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201; or

(v) a road that has been the subject of a request under 7-14-2622 and for which a legal route has been recognized by a district court as provided in 7-14-2622.

(3) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

History: (1)En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; Sec. 16-1004, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 16-1004(part), 32-2203(4), (11); amd. Sec. 1, Ch. 320, L. 1999; amd. Sec. 1, Ch. 440, L. 1999; amd. Sec. 36, Ch. 584, L. 1999; amd. Sec. 10, Ch. 125, L. 2001; amd. Sec. 1, Ch. 342, L. 2007; amd. Sec. 2, Ch. 241, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 241 in definition of county road inserted (v) including a road recognized by a district court as a legal route; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Flood control projects, Title 76, ch. 5, part 11.

7-14-2102. General powers relating to county roads — assignment of responsibility. Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts. The board may assign responsibility for the supervision of county roads to a county surveyor or to a county road superintendent or may allocate the duties between the county surveyor and the county road superintendent.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(4); amd. Sec. 2, Ch. 336, L. 1995.

7-14-2103. Duties of county commissioners concerning county roads. (1) A board of county commissioners has general supervision over the county roads within the county.

(2) A board may survey, view, lay out, record, open, work, and maintain county roads that are established in accordance with this chapter. Guideposts must be erected.

(3) A board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part); amd. Sec. 1, Ch. 253, L. 1993; amd. Sec. 2, Ch. 440, L. 1999.

Cross-References
Petition procedure, Title 7, ch. 14, part 26.

7-14-2104. Repealed. Sec. 1, Ch. 211, L. 1979.
History: En. Sec. 1, Ch. 153, L. 1939; R.C.M. 1947, 17-609.

7-14-2105. Reports to department of transportation. (1) Each board of county commissioners shall make reports relating to roads under its supervision which are requested by the department of transportation.

(2) The board and the road supervisor of a county and all other officers who may have the care and supervision of the public highways and bridges shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.
History: (1)En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; Sec. 32-2801, R.C.M. 1947; (2)En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974; Sec. 32-2815, R.C.M. 1947; R.C.M. 1947, 32-2801(5), 32-2815; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2106. Parking regulations in unincorporated places. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to establish by resolution parking regulations for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.
History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-14-2107. Acquisition of right-of-way. (1) Each board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.

(2) Each board shall acquire rights-of-way for county roads and discontinue or abandon them only upon proper petition therefor.

(3) By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it.
History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2), (3)En. Sec. 8-201, Ch. 197, L. 1965; Sec. 32-4001, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-4001.

Cross-References
Establishment, alteration, or abandonment of county roads, Title 7, ch. 14, part 26.

7-14-2108. Recording of instruments related to acquisition of right-of-way. (1) When a right-of-way is voluntarily given or purchased, a written instrument conveying the right-of-way and incidents to the right-of-way must be signed and acknowledged by the person making it. The instrument must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned pursuant to Title 70, chapter 30, a certified copy of the judgment of the court must be made. The copy must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments must particularly describe the land.
History: En. Sec. 8-212, Ch. 197, L. 1965; R.C.M. 1947, 32-4012; amd. Sec. 11, Ch. 125, L. 2001.

7-14-2109. Transfer to state of county responsibility for right-of-way. A board of county commissioners shall transfer its control over and responsibility for a county road when the department of transportation notifies it that:

(1) a federal or state highway has been established and definitely located over a county road;

(2) funds are available for immediate construction of the highway;

(3) the highway will be improved and maintained by the department.
History: En. Sec. 8-216, Ch. 197. L. 1965; amd. Sec. 149, Ch. 316, L. 1974; R.C.M. 1947, 32-4016; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2110. Preparation of plat books. Each board of county commissioners may in its discretion order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable platbooks. Each board shall have recorded in it with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(1).

7-14-2111. Layout of roads. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965; R.C.M. 1947, 32-2809.

7-14-2112. Width of roads. (1) The width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road established or used as such prior to December 31, 1966.

History: En. Sec. 5-108, Ch. 197, L. 1965; R.C.M. 1947, 32-2808.

7-14-2113. County authority to establish speed limits. A board of county commissioners may, by ordinance, establish a special speed limit in accordance with 61-8-310 on any county road.

History: En. Sec. 1, Ch. 614, L. 1985; amd. Sec. 1, Ch. 43, L. 1999.

7-14-2114 through 7-14-2120 reserved.

7-14-2121. County road districts. (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in the district.

(2) If the board does not divide the county into districts, the county constitutes one road district.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part); amd. Sec. 575, Ch. 61, L. 2007.

7-14-2122. County road supervisor. (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve at the pleasure of the board. In a county in which the county surveyor is not paid an annual salary, the surveyor may by agreement be employed by the board to perform the services of road supervisor. The surveyor may not be paid for any duty otherwise required by law to be performed as county surveyor.

(2) Under the direction and control of the board, the road supervisor shall:

(a) prescribe the times and places for all work to be done on the county roads;

(b) report any delinquency or inefficiency of a person employed on a road;

(c) perform other duties that are prescribed by the board.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(2), (3); amd. Sec. 576, Ch. 61, L. 2007.

7-14-2123. Acquisition of machinery and materials. (1) Out of the county road fund, a board of county commissioners may:

(a) purchase and operate grading and other machinery necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation pursuant to Title 70, chapter 30, or lease.

(2) A board may also acquire road-building material by gift.

History: En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(1), (2); amd. Sec. 12, Ch. 125, L. 2001.

7-14-2124. Disposition of surplus crushed rock and gravel. (1) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county.

(2) The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(3).

7-14-2125. Inspection of roads and work on roads. (1) The board of county commissioners may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: **En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(1), (3).**

7-14-2126. Compensation for making inspections. The person making the inspections authorized by 7-14-2125 shall receive a daily salary equal to the equivalent of a daily rate for the salary established in 7-4-2107(2) and actual expenses if the person does not receive other compensation for that day and is not on an annual salary. The claims must be audited and allowed in the same manner as other claims against the county.

History: **En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(2); amd. Sec. 2, Ch. 264, L. 1985; amd. Sec. 6, Ch. 507, L. 2001.**

7-14-2127. Temporary limitation or prohibition of traffic. (1) A board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part of a county road when it is necessary in order to preserve or repair the roads.

(2) A board of county commissioners may temporarily close a county road or bridge or any part of a county road for maintenance or repair if the board determines that the road or bridge is unsafe. This temporary closure is not considered abandonment. The board of county commissioners shall erect signs indicating that the road is closed.

History: **En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(4); amd. Sec. 3, Ch. 440, L. 1999.**

7-14-2128. Designation of emergency area near construction project. (1) A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

(2) Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs.

(3) The board shall remove the emergency designation within 30 days after the cessation of the increased traffic.

History: **(1)En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R.C.M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974; Sec. 32-2816, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R.C.M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974; Sec. 32-2817, R.C.M. 1947; R.C.M. 1947, 32-2816, 32-2817.**

7-14-2129. Control of livestock in emergency area. (1) A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock is under herd in transit across the emergency area in the custody of an attendant.

(2) A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector, and the usual inspection fees and mileage shall be paid by the owner of such livestock.

(3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined not less than $10 or more than $50 for each violation.

History: **(1)En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R.C.M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974; Sec. 32-2818, R.C.M. 1947; (2)En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R.C.M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974; Sec. 32-2819, R.C.M. 1947; (3)En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R.C.M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974; Sec. 32-2820, R.C.M. 1947; R.C.M. 1947, 32-2818, 32-2819, 32-2820.**

7-14-2130. Control of the movement of livestock on or near county roads. (1) Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Where a county road connects with a state or federal highway which is fenced on both sides, the board of county commissioners may construct and maintain extensions of the fence

across the right-of-way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

(3) Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2)En. Sec. 5-110, Ch. 197, L. 1965; Sec. 32-2810, R.C.M. 1947; (3)En. Sec. 5-111, Ch. 197, L. 1965; Sec. 32-2811, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-2810, 32-2811.

Cross-References

Containment of livestock, Title 81, ch. 4.

7-14-2131. Reseeding of right-of-way. Whenever the natural sod cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board of county commissioners shall require the person or agency responsible for the disturbance to comply with 7-22-2152.

History: En. Sec. 5-113, Ch. 197, L. 1965; R.C.M. 1947, 32-2813; amd. Sec. 26, Ch. 607, L. 1985.

7-14-2132. Control of weeds along roads and highways. (1) The district weed board shall control noxious weeds on the county roads.

(2) If the department of transportation does not control noxious weeds on state and federal highways in any county, the district weed board shall control them. Upon presentation by the board of a verified account of the expenses incurred, the costs of control shall be paid by the department.

History: En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974; R.C.M. 1947, 32-2814; amd. Sec. 27, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Noxious weed control, Title 80, ch. 7, part 7.

7-14-2133. Removal of obstructions on county roads. (1) When a county road becomes obstructed, the board of county commissioners, or the county surveyor if the surveyor is in charge, shall remove the obstruction upon being notified of the obstruction.

(2) This section does not hold the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(3) For the purposes of this section, "obstruction" means an obstacle, such as a rock or a fallen tree, that if not removed would remain in the road indefinitely. The word does not mean snow, ice, or any other obstacle that will melt or dissipate on its own accord.

History: En. Sec. 5-204, Ch. 197, L. 1965; R.C.M. 32-2904(part); amd. Sec. 1, Ch. 245, L. 2001.

7-14-2134. Removal of highway encroachment. (1) Except as clarified in 23-2-312 and 23-2-313 and except as provided in subsection (4) of this section, if any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor shall immediately remove the encroachment.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection must comply with 23-2-313.

History: En. Sec. 11-105, Ch. 197, L. 1965; R.C.M. 1947, 32-4405; amd. Sec. 1, Ch. 201, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 201 in (1) at beginning inserted exception clause; inserted (4) providing that this section does not apply to a fence for livestock control or property management; and made minor changes in style. Amendment effective April 13, 2009.

Cross-References

Highway encroachments, Title 60, ch. 6.

7-14-2135. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at the occupant's or owner's place of residence if the person resides in the county; or

(b) by posting it on the encroachment if the person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4406; amd. Sec. 577, Ch. 61, L. 2007.

7-14-2136. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of $10 for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4407.

7-14-2137. Legal actions to remove encroachments or recover costs. (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the encroachment as a nuisance.

(b) If the road supervisor recovers judgment, the supervisor may have the supervisor's costs and $10 for each day the nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) The supervisor may recover the expense of removal, $10 for each day the encroachment remains after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4408; amd. Sec. 578, Ch. 61, L. 2007.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-14-2138. Prosecution by county attorney. (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in Title 7, chapter 14, parts 21 through 26 and 28, in the name of the state of Montana.

(2) All penalties, except those paid to a justice's court, must be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4409; amd. Sec. 2, Ch. 557, L. 1987; amd. Sec. 30, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (1) after "provided in" substituted "Title 7, chapter 14, parts 21 through 26 and 28" for "parts 21 through 28"; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by Justice's Court, 3-10-601.

7-14-2139. Procedure to make excavations across highway. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume, or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor, or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board.

(2) Any such bridge shall be maintained by the county.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(1), (2).

7-14-2140. Prevention of water flow over highway. Any person obtaining a construction permit or any person using the water of a ditch, dike, flume, or canal referred to in 7-14-2139 shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(3).

7-14-2141. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume, or canal or stores, distributes, or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, upon notification by the board of county commissioners, road supervisor, or county surveyor of the district where such overflow occurred, must repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning, or using such ditch or flume who permits an overflow is liable as provided in 45-8-111.

History: En. Sec. 11-104, Ch. 197, L. 1965; R.C.M. 1947, 32-4404.

Part 22
General Provisions Related to Bridges

7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of transportation.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever a bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if the surveyor is in charge, shall repair the bridge upon being notified of the need for repair.

(b) This subsection (3) may not be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part, "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county.

History: (1)En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974; Sec. 32-2901, R.C.M. 1947; (2)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; (3)En. Sec. 5-204, Ch. 197, L. 1965; Sec. 32-2904, R.C.M. 1947; R.C.M. 1947, 32-2901, 32-2904(part), 32-2905(1); (4)En. Sec. 1, Ch. 194, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 579, Ch. 61, L. 2007.

7-14-2202. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965; R.C.M. 1947, 32-2906.

7-14-2203. Repairs to streambeds, watercourses, and banks. The board of county commissioners may also make repairs to streambeds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

History: En. Sec. 5-205, Ch. 197, L. 1965; R.C.M. 1947, 32-2905(2).

7-14-2204. Construction and maintenance of bridges in municipalities. (1) Each board of county commissioners shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half, to be determined by the board, of the cost of planking, replanking, paving, or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: (1), (2)En. Sec. 5-202, Ch. 197, L. 1965; Sec. 32-2902, R.C.M. 1947; (3)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; R.C.M. 1947, 32-2902, 32-2905(3).

7-14-2205. Repealed. Sec. 1, Ch. 171, L. 2007.

History: En. Sec. 5-203, Ch. 197, L. 1965; R.C.M. 1947, 32-2903; amd. Sec. 49, Ch. 387, L. 1995; amd. Sec. 37, Ch. 584, L. 1999.

7-14-2206. Use of bridges in municipalities by street railway. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth or more than one-half of the cost of construction of the bridge.

(2) During the time the bridge is used by the railway, the railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth or more than one-half) as is determined by the board.

History: En. Sec. 7-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3603.

Cross-References

Collection by County Treasurer, 15-16-117.

Part 23
County Road Superintendent

7-14-2301. County road superintendent — appointment and compensation. (1) A board of county commissioners may appoint a county road superintendent. The superintendent has the duties, powers, and responsibilities set forth in this part. After the appointment, the county road superintendent shall serve at the pleasure of and under the direction and control of the board. The superintendent shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of the superintendent's duties.

(2) The superintendent must receive compensation as determined by the board.

History: Ap. p. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; Sec. 32-2803, R.C.M. 1947; Ap. p. Sec. 5-301, Ch. 197, L. 1965; Sec. 32-3001, R.C.M. 1947; R.C.M. 1947, 32-2803(4), 32-3001; amd. Sec. 3, Ch. 336, L. 1995.

7-14-2302. Duties of county road superintendent. (1) Under the direction and supervision of the board of county commissioners, the superintendent shall furnish plans and specifications for highway or bridge work. The superintendent is the presiding officer of all boards of road viewers.

(2) Under direction and supervision, the superintendent shall:

(a) take charge of all roads, bridges, and causeways under the jurisdiction of the county;

(b) open all new roads when they are established and ordered to be opened by the board;

(c) perform, at the time and in the manner directed by the board, whatever is lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965; R.C.M. 1947, 32-3002; amd. Sec. 580, Ch. 61, L. 2007.

7-14-2303. Equipment used by road superintendent. (1) Upon the requisition of the superintendent, the board of county commissioners shall furnish any necessary equipment, tools, and implements and pay for them out of the county road fund.

(2) The superintendent shall preserve the equipment, tools, and implements and may not allow them to be used except on public highways. At the expiration of the superintendent's term of office or upon removal from office, the supervisor shall turn over all equipment, tools, and implements to a successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965; R.C.M. 1947, 32-3005; amd. Sec. 581, Ch. 61, L. 2007.

7-14-2304. Employment of workers and hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board of county commissioners for an 8-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3006.

7-14-2305. Construction of drains and ditches to preserve roads. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of $50, to be recovered by the superintendent or board of county commissioners in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which, if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965; R.C.M. 1947, 32-3007.

Cross-References

Civil action, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

7-14-2306. Records and receipts to be maintained. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. The superintendent shall give each person performing work or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid for the work.

History: **En. Sec. 5-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3003; amd. Sec. 582, Ch. 61, L. 2007.**

7-14-2307. Payment of claims upon presentation of superintendent's certificate. Upon the presentation of any certificate issued by the superintendent and verification of it by the holder as in other cases of claims against the county, the board of county commissioners shall have a warrant issued for the amount of the certificate, drawn on the treasury against the county road fund.

History: **En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 1, Ch. 253, L. 1979.**

7-14-2308. Superintendent's report. At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of the superintendent's office and containing any other information the board requires. At the first monthly or quarterly meeting held after filing of a superintendent's report, the board of county commissioners shall examine the report.

History: **En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 2, Ch. 253, L. 1979; amd. Sec. 583, Ch. 61, L. 2007.**

Part 24
County Road and Bridge Contracts

7-14-2401. Authority to enter contracts. (1) Subject to the limitations and restrictions provided in the code for the letting of contracts, each board may let by contract the construction, maintenance, and improvement of county roads and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of $1,000.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: **(1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802; R.C.M 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-2802(2).**

Cross-References

County contracts, Title 7, ch. 5, part 23.

7-14-2402. Contracts for county roads. When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds $1,000, the work may in the discretion of the board be let by contract unless the board shall find that such work may be otherwise done at less cost.

History: **En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(1).**

7-14-2403. Advertisement for bids. Before any contract authorized by 7-14-2402 is let, the board shall advertise for bids as provided in 7-1-2121.

History: **En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(2); amd. Sec. 47, Ch. 354, L. 2001.**

7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102 and Title 18, chapter 2, part 4, and the board may reserve the right to reject any bids. If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: **En. Sec. 9-202, Ch. 197, L. 1965; R.C.M. 1947, 32-4202; amd. Sec. 4, Ch. 181, L. 2001.**

7-14-2405. Performance bond to be given by successful bidder. Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: **En. Sec. 9-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4203.**

7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges must meet the following requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted on the standard plan and specifications.

(b) All bids must be sealed. Each bidder must meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any bids. If a contract is awarded, the board shall award the contract in accordance with the requirements of 18-1-102 and Title 18, chapter 2, part 4. If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract may not be completed until the board, while formally convened, affirmatively accepts all of the work under the contract.

History: En. Sec. 9-204, Ch. 197, L. 1965; amd. Sec. 151, Ch. 316, L. 1974; R.C.M. 1947, 32-4204; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 5, Ch. 181, L. 2001.

Part 25
Financial Management of County Roads and Bridges

Part Cross-References

Local option motor fuel excise tax, Title 7, ch. 14, part 3.

7-14-2501. General road tax authorized. (1) Subject to 15-10-420 and to raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a tax upon the taxable property in the county. The tax must be collected the same as other taxes as the board may direct.

(2) This section does not apply to incorporated cities and towns that by ordinance provide for the levy of a tax for road, street, or alley purposes.

(3) All money collected under this section must be deposited in the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971; R.C.M. 1947, 32-3601; amd. Sec. 1, Ch. 351, L. 1981; amd. Sec. 1, Ch. 560, L. 1989; amd. Sec. 38, Ch. 584, L. 1999; amd. Sec. 46, Ch. 574, L. 2001.

Cross-References

Collection by County Treasurer, 15-16-117.

7-14-2502. Special bridge tax authorized — combined ferry and bridge fund. (1) Subject to 15-10-420, a board may levy a special tax on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(3) These taxes must be levied and collected in the same manner as other taxes. Except that when the county has a combined ferry and bridge fund, the money must be kept as a special bridge fund, subject to the order of the board for use as provided in this section and may not be transferable to any other fund.

(4) If a county owns or operates a public ferry, the board may combine into a single fund the revenue from the county public ferry tax levy authorized in 7-14-2807, the revenue from the special municipal bridge levy authorized in 7-14-2503, and the revenue from the levy authorized by this section. The fund may be used for any lawful purpose authorized for bridges in this part or in Title 7, chapter 14, part 22, or for public ferries in Title 7, chapter 14, part 28.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973; R.C.M. 1947, 32-3602; amd. Sec. 1, Ch. 283, L. 1979; amd. Sec. 1, Ch. 36, L. 1989; amd. Sec. 1, Ch. 147, L. 1989; amd. Sec. 39, Ch. 584, L. 1999; amd. Sec. 47, Ch. 574, L. 2001.

Cross-References

Taxation — public and governmental purposes, 7-6-2527.

7-14-2503. Special municipal bridge tax authorized. Subject to 15-10-420, a board may levy a special tax on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965; R.C.M. 1947, 32-3604; amd. Sec. 40, Ch. 584, L. 1999; amd. Sec. 48, Ch. 574, L. 2001.

7-14-2504. Repealed. Sec. 21, Ch. 453, L. 2005.

History: En. Sec. 7-105, Ch. 197, L. 1965; R.C.M. 1947, 32-3605; amd. Sec. 50, Ch. 387, L. 1995; amd. Sec. 15, Ch. 495, L. 2001; amd. Sec. 49, Ch. 574, L. 2001.

7-14-2505. Allocation of proceeds of oil and gas leases and reserved royalty interests to county road fund. Each board of county commissioners may allocate to the county road fund not more than 50% of the proceeds from oil and gas leases entered into and royalty interests reserved under Title 82, chapter 10, part 2.

History: En. Sec. 1, Ch. 105, L. 1979.

7-14-2506. County road and bridge capital improvement fund. The governing body of a county may establish a road and bridge capital improvement fund in accordance with the provisions of Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 522, L. 1989; amd. Sec. 3, Ch. 35, L. 2003; amd. Sec. 1, Ch. 380, L. 2007.

7-14-2507. Qualifications to vote on question of additional mill levy. (1) An individual is entitled to vote at an election conducted pursuant to 15-10-425 to exceed the levy authority provided for in 7-14-2501(1) if the individual possesses all of the qualifications required of electors under the general election laws of the state and is:

(a) a resident of the area subject to the proposed tax; or

(b) the owner of taxable property located in the area subject to the proposed tax.

(2) An individual who is the owner of the property described in subsection (1)(b) need not possess the qualifications required of an elector in subsection (1)(a) if the elector is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the election in which the individual intends to vote.

History: En. Sec. 1, Ch. 350, L. 2007.

7-14-2508 through 7-14-2510 reserved.

7-14-2511. Creation of county motor vehicle fund. When collected by the treasurer of the county in which a motor vehicle is registered, all license and registration fees for which there is no specific provision as to disposition of the fee shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965; R.C.M. 1947, 32-3701; amd. Sec. 3, Ch. 253, L. 1979.

Cross-References

Disposition of motor vehicle registration fees, 61-3-509.

7-14-2512. City and county road funds. (1) (a) The county treasurer shall segregate from the county motor vehicle fund and designate as the "city road fund" 50% of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city or town.

(b) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the county road fund.

History: (1)(a), (2)En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967; amd. Sec. 1, Ch. 467, L. 1975; Sec. 32-3702, R.C.M. 1947; (1)(b)En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; Sec. 32-3703, R.C.M. 1947; R.C.M. 1947, 32-3702, 32-3703(1).

Cross-References

Use of city road fund, 7-14-4113.

7-14-2513. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965; R.C.M. 1947, 32-3706.

7-14-2514. Limit on expenditures for road district. (1) The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board of county commissioners to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district.

(2) The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: **En. Sec. 5-112, Ch. 197, L. 1965; R.C.M. 1947, 32-2812.**

7-14-2515 through 7-14-2519 reserved.

7-14-2520. Authorization of road and highway bonds. (1) A county may issue limited general obligation bonds to:

(a) finance the establishment, construction, reconstruction, improvement, maintenance, and repair of county roads;

(b) acquire rights-of-way for roads and highways; or

(c) acquire capital equipment or supplies to improve, maintain, or repair roads and highways.

(2) Bond proceeds may be used to pay the costs for the issuance and sale of the bonds.

(3) The bonds may not be issued for a term longer than 20 years. The bonds may be sold at public or private sale on terms and at prices that the county commissioners determine to be advantageous. The bonds must be authorized, sold, and issued, with provision for their payment, in accordance with the provisions of chapter 7, part 22, of this title, except as those provisions may conflict with the express provisions of this section.

(4) The bonds, except for bonds issued to refund bonds issued for the purpose described in subsection (1), must be authorized by the registered electors of the county, exclusive of the electors residing within the incorporated area of a city or town located in whole or in part within the county, in accordance with the provisions of chapter 7, part 22, of this title.

(5) The bonds issued under this section are subject to any other statutory debt limitations. Bonds may not be issued under this section in a principal amount that, with all the bonds and warrants of the county, exceeds 0.68% of the total assessed value of taxable property, determined as provided in 15-8-111, in the county, exclusive of the total assessed value of taxable property in all incorporated cities and towns located in whole or in part within the county.

(6) Bonds issued under this section are legal and valid obligations of the county, and the full faith and credit of the county must be irrevocably pledged to the prompt payment of the principal of the bonds and interest on the bonds as they become due. Property taxes for the payment of the principal or interest may not be levied by the county against the taxable property in the incorporated area of a city or town located in whole or in part within the county.

(7) The powers conferred on a county by this section to provide financing for county roads and highways are in addition to the powers conferred by any other general, special, or local law. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling. To the extent that the provisions of other general, special, or local laws apply to the acquisition of the property or the letting, undertaking, or completion of the work to be financed by bonds issued under this section, the provisions are applicable to the acquisition or work.

History: **En. Sec. 1, Ch. 479, L. 2001.**

7-14-2521. Bond financing for county bridges authorized. Subject to the limitations and restrictions provided in the law, each board of county commissioners may issue bonds upon the faith and credit of the county for the construction or improvement of county bridges.

History: **En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(3); amd. Sec. 2, Ch. 479, L. 2001.**

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

7-14-2522. County bridge bonds authorized. (1) Each board may issue, negotiate, and sell coupon bonds on the credit of the county:

(a) to construct, improve, or acquire rights-of-way for public bridges;

(b) to refund, pay, and redeem optional, redeemable, or maturing bridge bonds when there are not sufficient funds available and it is considered in the best interests of the county to refund the bonds.

(2) The bonds must be issued as provided in 7-7-2201.

History: **En. Sec. 7-301, Ch. 197, L. 1965; R.C.M. 1947, 32-3801(1), (3); amd. Sec. 3, Ch. 479, L. 2001.**

7-14-2523. Term of county bridge bonds. (1) Bonds issued under 7-14-2522(1) may not be issued for a term longer than 20 years.

(2) A bond issued under 7-14-2522(1)(b) may not be issued for a term longer than 10 years, except that if the unexpired term of the bonds to be refunded is greater than 10 years, the refunding bonds may be issued for the unexpired term.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(1), (2); amd. Sec. 50, Ch. 574, L. 2001.

7-14-2524. Limitation on amount of bonds issued. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds 0.68% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) A county may issue bonds in an amount that, with all outstanding bonds and warrants, exceeds 0.68% but does not exceed 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

History: (1), (2)En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973; Sec. 32-3804, R.C.M. 1947; (3)En. Sec. 7-301, Ch. 197, L. 1965; Sec. 32-3801, R.C.M. 1947; R.C.M. 1947, 32-3801(2), 32-3804(part); amd. Sec. 2, Ch. 332, L. 1979; amd. Sec. 4, Ch. 617, L. 1979; amd. Sec. 51, Ch. 614, L. 1981; amd. Sec. 8, Ch. 695, L. 1985; amd. Sec. 4, Ch. 655, L. 1987; amd. Sec. 69, Ch. 11, Sp. L. June 1989; amd. Sec. 16, Ch. 10, L. 1993; amd. Sec. 13, Ch. 9, Sp. L. November 1993; amd. Sec. 24, Ch. 451, L. 1995; amd. Sec. 3, Ch. 219, L. 1997; amd. Sec. 4, Ch. 466, L. 1997; amd. Sec. 7, Ch. 285, L. 1999; amd. Sec. 27, Ch. 426, L. 1999; amd. Sec. 22, Ch. 556, L. 1999; amd. Sec. 8, Ch. 7, L. 2001; amd. Sec. 16, Ch. 29, L. 2001; amd. Sec. 4, Ch. 187, L. 2007.

7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973; R.C.M. 1947, 32-3802; amd. Sec. 5, Ch. 617, L. 1979; amd. Sec. 52, Ch. 614, L. 1981; amd. Sec. 9, Ch. 695, L. 1985; amd. Sec. 5, Ch. 655, L. 1987; amd. Sec. 70, Ch. 11, Sp. L. June 1989; amd. Sec. 14, Ch. 9, Sp. L. November 1993; amd. Sec. 25, Ch. 451, L. 1995; amd. Sec. 5, Ch. 466, L. 1997; amd. Sec. 8, Ch. 285, L. 1999; amd. Sec. 28, Ch. 426, L. 1999; amd. Sec. 23, Ch. 556, L. 1999; amd. Sec. 17, Ch. 29, L. 2001; amd. Sec. 5, Ch. 187, L. 2007.

7-14-2526. Choice of form of bonds. All bonds issued by a county must be either amortization bonds or serial bonds.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(1); amd. Sec. 13, Ch. 459, L. 1997.

7-14-2527. Amortization bonds. (1) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable.

(2) The part payment of principal increases with each following installment in the same amount the interest payment decreases so that the combined amount payable on principal and interest is the same on each interest payment date.

(3) However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(2).

7-14-2528. Serial bonds. (1) The term "serial bonds" means a bond issue payable in equal annual installments, one installment consisting of one or more bonds becoming due and payable each year.

(2) The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run so that the total amount of principal to be paid each year will be the same.

(3) The amount of installments becoming due and payable the first year or the first and second years may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at $100, $500, or $1,000, as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(3).

7-14-2529. Payment of interest. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(4).

7-14-2530. Redemption of bonds authorized. (1) All bonds issued for a term longer than 5 years shall be redeemable, at the option of the county, 5 years after the date of issue and on any payment due date thereafter before maturity.

(2) This statement shall appear on the face of each bond.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(3).

7-14-2531. Definition of term single purpose. (1) It shall be deemed a single purpose to:

(a) acquire a right-of-way for and construct a public highway, including any bridge or bridges thereon;

(b) contribute to the cost of a federal-aid bridge;

(c) contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

History: En. Sec. 7-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3803; amd. Sec. 12, Ch. 220, L. 1985.

Part 26

Establishment, Alteration, and Abandonment of County Roads

Part Cross-References

Costs of discontinuation, 7-14-104.

7-14-2601. Petition to establish, alter, or abandon a county road. (1) Any 10, or a majority, of the freeholders of a road district taxable therein for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

(2) When the road petitioned for is on the dividing line between two counties, the same procedure must be followed except that a copy of the petition must be presented to each board. The two boards shall act jointly.

(3) As used in this part, unless the context requires otherwise:

(a) "board" means the board of county commissioners;

(b) "abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called "vacation".

History: (1), (2)En. Sec. 8-202, Ch. 197, L. 1965; Sec. 32-4002, R.C.M. 1947; (3)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-4002(part).

7-14-2602. Contents of petition. The petition must set forth:

(1) the particular road or roads to be opened, established, constructed, changed, abandoned, or discontinued;

(2) the general route thereof;

(3) the lands and owners affected;

(4) whether the owners who can be found consent thereto;

(5) where consent is not given, the probable cost of the right-of-way;

(6) the necessity for and advantage of the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4003.

7-14-2603. Investigation of request concerning road — decision. (1) At its next regular or special meeting or in any case at a date within 30 days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation.

(3) After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(1), (2).

7-14-2604. Notice of decision on petition. Within 10 days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(3).

7-14-2605. Opening of county road. If the petition is for the opening of a county road and the board grants the prayer ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2606. Survey of road. (1) The board may order the county surveyor, or some other competent surveyor if the county surveyor is incompetent, to survey and plat the road. The surveyor shall file the surveyor's field notes with the county clerk and recorder.

(2) The surveyor must receive $7 a day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part); amd. Sec. 584, Ch. 61, L. 2007.

7-14-2607. Damages resulting from establishment or alteration of road. (1) Whenever the board makes an order establishing or changing any road, it shall determine the amount of damages sustained by each owner or claimant of lands or improvements affected by the road. Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, must be the amount of damages awarded.

(2) Damages must be paid to the owner or claimant, if known, upon the owner or claimant showing or establishing the right or title to the lands or improvements and furnishing proper deeds and releases.

History: En. Sec. 8-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4006(1), (2); amd. Sec. 585, Ch. 61, L. 2007.

7-14-2608. Effect of acceptance or rejection of award of damages. (1) If all awards are accepted, the board shall declare the road a county road and open it.

(2) (a) If any award of damages provided for in 7-14-2607 is not accepted within 20 days after the date of the award, it shall be deemed rejected by the owner.

(b) The board shall by order direct that proceedings to procure the right-of-way be instituted under Title 70, chapter 30 by the county attorney against all nonaccepting landowners.

(c) In such proceedings it shall be made to appear that the board shall have declared by resolution that the right-of-way was necessary and desirable.

History: (1)En. Sec. 8-206, Ch. 197, L. 1965; Sec. 32-4006, R.C.M. 1947; (2)En. Sec. 8-207, Ch. 197, L. 1965; Sec. 32-4007, R.C.M. 1947; R.C.M. 1947, 32-4006(3), 32-4007(1), (3).

7-14-2609. Effect of failure to give notice. The proceedings provided for in 7-14-2608 shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right-of-way.

History: En. Sec. 8-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4007(2).

7-14-2610. Payment of damages and expenses. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by 7-4-2107 and 7-4-2108, shall be paid out of the county road fund on the order of the board.

History: **En. Sec. 8-208, Ch. 197, L. 1965; R.C.M. 1947, 32-4008.**

7-14-2611. Alteration of road to follow subdivision or section lines. (1) A majority of the freeholders or owners residing on any county road or portion thereof may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in 7-14-2603. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: **En. Sec. 8-209, Ch. 197, L. 1965; R.C.M. 1947, 32-4009.**

7-14-2612. Crossing of railroad, canal, or ditch by county road — costs. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: **En. Sec. 8-213, Ch. 197, L. 1965; R.C.M. 1947, 32-4013.**

7-14-2613. Notice to district supervisor of opening or alteration of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish the supervisor with a certified copy of the order of the board.

History: **En. Sec. 8-210, Ch. 197, L. 1965; R.C.M. 1947, 32-4010; amd. Sec. 586, Ch. 61, L. 2007.**

7-14-2614. Record of road opening or alteration to be maintained. When a county road is opened or changed, the findings of the board, the plat field notes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: **En. Sec. 8-211, Ch. 197, L. 1965; R.C.M. 1947, 32-4011.**

7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board.

(2) An order to abandon a county road is not valid unless preceded by notice and public hearing.

(3) The board may not abandon a county road or right-of-way used to provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302, unless another public road or right-of-way provides substantially the same access.

(4) The board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all of the landowners agree to the abandonment.

History: **En. Sec. 8-214, Ch. 197, L. 1965; R.C.M. 1947, 32-4014; amd. Sec. 3, Ch. 107, L. 1999; amd. Sec. 1, Ch. 168, L. 2005.**

7-14-2616. Procedure to discontinue street. (1) The county commissioners may discontinue a street or alley or any part of a street or alley in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed is required.

(3) Before acting upon the petition, a notice must be published as provided in 7-1-2121, stating when the petition will be acted on and what street or alley or part of a street or alley is asked to be vacated.

History: **(1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802; amd. Sec. 48, Ch. 354, L. 2001.**

Cross-References

Vacation of plats, 76-3-305.

7-14-2617. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-2616 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such street or alley.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

Cross-References

Vacation of plats — utility easements, 76-3-305.

7-14-2618 through 7-14-2620 reserved.

7-14-2621. Establishment and alteration of stock lanes. (1) A stock lane is a county road established and maintained for the driving and travel of livestock. A stock lane may not be less than 60 feet wide. The width must be determined by the board in the order creating it.

(2) Upon presentation of a proper petition, a board may establish, alter, or vacate stock lanes when it considers it expedient and necessary for the convenience of the public and for the convenience of travel on established roads. A stock lane may adjoin and parallel a county road and must be described in the petition for creation and in the order of the board creating the stock lane.

(3) The provisions of this part and the general laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain as provided in Title 70, chapter 30, apply to stock lanes. References in all petitions, orders, and proceedings must be to stock lanes in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965; R.C.M. 1947, 32-4015; amd. Sec. 13, Ch. 125, L. 2001.

7-14-2622. Recognition of county road route by district court. (1) The county commission or a directly affected person, if the person has appeared before a regular meeting of the county commission to notify the commission of the person's intent, may request that a district court recognize a route of a county road that is maintained by the county and used by the public as the legal route if any of the following conditions exist:

(a) there is doubt about the legal establishment or evidence of establishment of the county road;

(b) the location of the county road cannot be accurately determined because of:

(i) numerous alterations to the road;

(ii) a defective survey of the road or adjacent property; or

(iii) loss or destruction of the original survey of the road; or

(c) the road as traveled and used for 10 years or more does not conform to the location of the road as described in county records.

(2) The county commission or the directly affected person requesting recognition of a route shall provide to the court:

(a) the reason for the request and the condition that exists;

(b) the location of the portion of the road that is the subject of the request;

(c) any maps or historical use information that may assist the court in determining whether or not to recognize a route; and

(d) any other information requested by the court.

(3) Upon receipt of a request and consideration of the information provided and any other information that the court considers appropriate, the court may, subject to subsection (4), recognize a route of a county road as the legal route. The route as recognized by the court is considered to be a county road.

(4) The court shall provide notice and the opportunity for a public hearing to affected landowners, the county commission, and directly affected persons before recognizing or declining to recognize a route of a county road as the legal route.

(5) This section does not apply to county roads established by prescriptive easement.

History: En. Sec. 1, Ch. 241, L. 2009.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

Part 27
Local Improvement Districts
(Repealed)

7-14-2701. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1)En. Sec. 5-401, Ch. 197, L. 1965; Sec. 32-3101, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-3101(1); amd. Sec. 1, Ch. 42, L. 1993.

7-14-2702. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Secs. 5-402, 5-418, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part), 32-3118(part); amd. Sec. 4, Ch. 253, L. 1979.

7-14-2703. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-402, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part).

7-14-2704. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-403, Ch. 197, L. 1965; R.C.M. 1947, 32-3103; amd. Sec. 2, Ch. 42, L. 1993.

7-14-2705. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Secs. 5-404, 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(1), 32-3105(1); amd. Sec. 5, Ch. 253, L. 1979; amd. Sec. 587, Ch. 61, L. 2007.

7-14-2706. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(2), (3); amd. Sec. 24, Ch. 349, L. 1985.

7-14-2707. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3105(2) thru (4); amd. Sec. 6, Ch. 253, L. 1979; amd. Sec. 588, Ch. 61, L. 2007.

7-14-2708. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3106(1); amd. Sec. 589, Ch. 61, L. 2007.

7-14-2709. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1)En. Sec. 5-406, Ch. 197, L. 1965; Sec. 32-3106, R.C.M. 1947; (2)En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; Sec. 32-3107, R.C.M. 1947; R.C.M. 1947, 32-3106(2), 32-3107(1); amd. Sec. 590, Ch. 61, L. 2007.

7-14-2710. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; R.C.M. 1947, 32-3107(2), (3); amd. Sec. 3, Ch. 42, L. 1993.

7-14-2711. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-410, Ch. 197, L. 1965; R.C.M. 1947, 32-3110; amd. Sec. 7, Ch. 253, L. 1979.

7-14-2712. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(1), (2); amd. Sec. 591, Ch. 61, L. 2007.

7-14-2713. Repealed. Sec. 39, Ch. 286, L. 2009; sec. 37, Ch. 291, L. 2009.

History: En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(3).

7-14-2714. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-414, Ch. 197, L. 1965; R.C.M. 1947, 32-3114.

7-14-2715. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4205.

7-14-2716. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(1), (3); amd. Sec. 6, Ch. 181, L. 2001.

7-14-2717. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(2).

7-14-2718. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4207.

7-14-2719. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-429, Ch. 197, L. 1965; R.C.M. 1947, 32-3129; amd. Sec. 592, Ch. 61, L. 2007.

7-14-2720. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(1) thru (3); amd. Sec. 593, Ch. 61, L. 2007.

7-14-2721. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-431, Ch. 197, L. 1965; R.C.M. 1947, 32-3131; amd. Sec. 594, Ch. 61, L. 2007.

7-14-2722 through 7-14-2730 reserved.

7-14-2731. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(2), (3).

7-14-2732. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(4), (5).

7-14-2733. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1)En. Sec. 5-408, Ch. 197, L. 1965; Sec. 32-3108, R.C.M. 1947; (2)En. Sec. 5-409, Ch. 197, L. 1965; Sec. 32-3109, R.C.M. 1947; R.C.M. 1947, 32-3108, 32-3109.

7-14-2734. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-411, Ch. 197, L. 1965; R.C.M. 1947, 32-3111(1) thru (3).

7-14-2735. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1)En. Sec. 5-411, Ch. 197, L. 1965; Sec. 32-3111, R.C.M. 1947; (2)En. Sec. 5-417, Ch. 197, L. 1954; Sec. 32-3117, R.C.M. 1947; R.C.M. 1947, 32-3111(4), 32-3117(3); amd. Sec. 23, Ch. 27, Sp. L. November 1993.

7-14-2736. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(1).

7-14-2737. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(2).

7-14-2738. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part); amd. Sec. 24, Ch. 27, Sp. L. November 1993.

7-14-2739. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(1); amd. Sec. 25, Ch. 349, L. 1985; amd. Sec. 25, Ch. 27, Sp. L. November 1993.

7-14-2740. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(2); amd. Sec. 26, Ch. 27, Sp. L. November 1993.

7-14-2741. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part).

7-14-2742. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(1); amd. Sec. 27, Ch. 27, Sp. L. November 1993.

7-14-2743. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(2); amd. Sec. 28, Ch. 27, Sp. L. November 1993.

7-14-2744. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1) thru (3)En. Sec. 5-419, Ch. 197, L. 1965; Sec. 32-3119, R.C.M. 1947; (4)En. Sec. 5-420, Ch. 197, L. 1965; Sec. 32-3120, R.C.M. 1947; R.C.M. 1947, 32-3119, 32-3120; amd. Sec. 29, Ch. 27, Sp. L. November 1993.

7-14-2745. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1), (2)En. Sec. 5-418, Ch. 197, L. 1965; Sec. 32-3118, R.C.M. 1947; (3) thru (6)En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971; Sec. 32-3121, R.C.M. 1947; R.C.M. 1947, 32-3118(part), 32-3121; amd. Sec. 6, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 23, Ch. 370, L. 1987; amd. Sec. 30, Ch. 27, Sp. L. November 1993.

7-14-2746. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(4).

7-14-2747 through 7-14-2750 reserved.

7-14-2751. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-422, Ch. 197, L. 1965; R.C.M. 1947, 32-3122.

7-14-2752. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(1).

7-14-2753. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1) thru (5)En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; Sec. 32-3123, R.C.M. 1947; (6)En. Sec. 5-426, Ch. 197, L. 1965; Sec. 32-3126, R.C.M. 1947; R.C.M. 1947, 32-3123(2) thru (6), 32-3126(part); amd. Sec. 595, Ch. 61, L. 2007.

7-14-2754. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(7).**

7-14-2755. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-424, Ch. 197, L. 1965; R.C.M. 1947, 32-3124; amd. Sec. 31, Ch. 27, Sp. L. November 1993.**

7-14-2756. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(1), (2); amd. Sec. 596, Ch. 61, L. 2007.**

7-14-2757. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(3).**

7-14-2758. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(4).**

7-14-2759. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).**

7-14-2760. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(1).**

7-14-2761. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-428, Ch. 197, L. 1965; R.C.M. 1947, 32-3128; amd. Sec. 597, Ch. 61, L. 2007.**

7-14-2762. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).**

7-14-2763. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(2), (3).**

Part 28
Ferries and Wharves

7-14-2801. General powers of county relating to ferries. The board of county commissioners, under limitations and restrictions as are prescribed by law, may:

(1) lay out, maintain, control, and manage county ferries within the county and, subject to 15-10-420, levy taxes for county ferries as provided by law;

(2) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county ferries in adjacent counties, wholly or in part as may be agreed upon between the boards of the counties concerned, and subject to 15-10-420, levy taxes as provided by law.

History: **En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; R.C.M. 1947, 16-1004(part); amd. Sec. 41, Ch. 584, L. 1999.**

7-14-2802. Construction and operation of ferries uniting two counties. (1) When a public ferry, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When individuals are employed on joint ferries, they shall report quarterly to each board, giving the information that each board may require.

History: **En. Sec. 5-207, Ch. 197, L. 1965; R.C.M. 1947, 32-2907; amd. Sec. 598, Ch. 61, L. 2007.**

7-14-2803. Establishment and operation of public ferry or wharf upon petition. When a petition to a board of county commissioners indicates that it is necessary to establish and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, the county, through its board of county commissioners, may construct a ferry or wharf or may purchase or acquire a ferry or wharf by condemnation, as provided in Title 70, chapter 30, and may operate and maintain a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering the county. The county may also acquire, operate, and maintain all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry or wharf. The county may operate the ferry or wharf for free or may charge for the use.

History: **En. Sec. 1, Ch. 33, L. 1909; re-en. Sec. 4477, R.C.M. 1921; re-en. Sec. 4477, R.C.M. 1935; R.C.M. 1947, 16-1116; amd. Sec. 14, Ch. 125, L. 2001.**

7-14-2804. Acquisition of property for public ferries and wharves. (1) Upon the proper showing as provided in 7-14-2803, each board of county commissioners may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of Title 70, chapter 30.

(3) No board shall establish or maintain a county ferry or wharf with a landing place in any incorporated city or town which by its charter is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965; R.C.M. 1947, 32-4017.

7-14-2805. Establishment and operation of public ferry or wharf by county upon its own motion. (1) Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more individuals to operate the free or toll ferries and wharves.

(2) While ferries or wharves are owned by a county and operated and managed by the board, the operation is expressly declared to be a governmental function.

(3) The board may also lease any ferries or wharves owned by the county to a company, firm, or individual to be operated for the use of the public. A company, firm, or individual shall give a bond, in an amount considered sufficient by the board, conditioned for the careful and businesslike operation of the ferry or wharf in accordance with law and the regulations of the board. When a ferry or wharf is operated by a lessee of the county, the operation is the private function of the lessee.

History: En. Sec. 4, Ch. 33, L. 1909; re-en. Sec. 4480, R.C.M. 1921; re-en. Sec. 4480, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1943; R.C.M. 1947, 16-1119; amd. Sec. 599, Ch. 61, L. 2007.

7-14-2806. Rules and rates for public ferry or wharf. (1) The board of county commissioners shall make all needful rules for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies.

(2) In all cases the rate of toll shall be printed in legible form and posted upon the boat and at the landing places.

History: En. Sec. 5, Ch. 33, L. 1909; re-en. Sec. 4481, R.C.M. 1921; re-en. Sec. 4481, R.C.M. 1935; R.C.M. 1947, 16-1120.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-14-2807. Tax levy for public ferry — combined ferry and bridge fund. (1) Subject to 15-10-420, if a county owns or operates a public ferry, the board of county commissioners may levy a tax on the taxable value of all taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

(2) The board may combine the revenue from the tax authorized in this section with revenue from taxes to support bridges as provided in 7-14-2502.

History: En. Sec. 1, Ch. 53, L. 1959; R.C.M. 1947, 32-1518; amd. Sec. 2, Ch. 36, L. 1989; amd. Sec. 42, Ch. 584, L. 1999; amd. Sec. 51, Ch. 574, L. 2001.

7-14-2808 through 7-14-2820 reserved.

7-14-2821. Permission to operate ferry between counties. (1) When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of the county situated on the left bank descending the river, creek, or slough.

(2) The board may not grant authority to erect a toll ferry until the notice of the intended application is given as required in 7-14-2822.

(3) After notice is given, an application must be made in writing, under oath, to the board of the proper county. The applications must contain a description of the proposed ferry landings; the names of the owners, if known, of the proposed landings; and a statement that notice of the application has been served at least 10 days prior to the date of application on those landowners who are not parties to the application.

History: (1)En. Sec. 2820, Pol. C. 1895; re-en Sec. 1457, Rev. C. 1907; re-en. Sec. 1766, R.C.M. 1921; Cal. Pol. C. Sec. 2843; re-en. Sec. 1766, R.C.M. 1935; Sec. 32-1501, R.C.M. 1947; (2)En. Sec. 2821, Pol. C. 1895; re-en. Sec. 1458, Rev. C. 1907; re-en. Sec. 1767, R.C.M. 1921; Cal. Pol. C. Sec. 2844; re-en. Sec. 1767, R.C.M. 1935; amd. Sec. 39, Ch. 136, L. 1974; Sec. 32-1502, R.C.M. 1947; (3)En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907;

re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; Sec. 32-1503, R.C.M. 1947; R.C.M. 1947, 32-1501, 32-1502, 32-1503(part); amd. Sec. 8, Ch. 253, L. 1979.

7-14-2822. Notice of application to operate ferry. Every applicant for authority to erect and take tolls on a public ferry must publish notice as provided in 7-1-2121, specifying the location and the time when and place where the application will be made. Publication must be made in at least one newspaper in each county in which the ferry is or touches or, if there is no newspaper published in the county, then in one published in an adjoining county.

History: En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; R.C.M. 1947, 32-1503(part); amd. Sec. 49, Ch. 354, L. 2001.

7-14-2823. Hearing and decision on application. (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner of the landing to apply, is entitled to operate the ferry, authority to erect and take tolls on the ferry may be granted to the applicant for the term of 10 years. The board may at any time authorize and maintain fords across any water within any distance of a ferry.

(2) The board granting authority to keep a public ferry shall at the same time:

(a) fix the amount of a bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross on the ferry and provide for the annual renewal of the bond;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls on the ferry, not less than $3 or more than $100 a month, payable annually;

(c) fix the rate of tolls that may be collected for crossing on the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries that it has by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, the commissioner may not act in those matters.

History: Ap. p. Sec. 2823, Pol. C. 1895; re-en. Sec. 1460, Rev. C. 1907; re-en. Sec. 1769, R.C.M. 1921; Cal. Pol. C. Sec. 2893; re-en. Sec. 1769, R.C.M. 1935; Sec. 32-1504, R.C.M. 1947; Ap. p. Sec. 2824, Pol. C. 1895; re-en. Sec. 1461, Rev. C. 1907; re-en. Sec. 1770, R.C.M. 1921; Cal. Pol. C. Sec. 2845; re-en. Sec. 1770, R.C.M. 1935; Sec. 32-1505, R.C.M. 1947; (3)En. Sec. 2831, Pol. C. 1895; re-en. Sec. 1468, Rev. C. 1907; re-en. Sec. 1777, R.C.M. 1921; Cal. Pol. C. Sec. 2852; re-en. Sec. 1777, R.C.M. 1935; Sec. 32-1512, R.C.M. 1947; R.C.M. 1947, 32-1504, 32-1505, 32-1512; amd. Sec. 13, Ch. 220, L. 1985; amd. Sec. 24, Ch. 370, L. 1987; amd. Sec. 600, Ch. 61, L. 2007.

7-14-2824. Preference for landowner. The owner of the land on either bank of the waters to be crossed, with the owner of the land on the left bank descending given preference over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry. Whenever the owners of the banks do not apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant authority to another.

History: En. Sec. 2833, Pol. C. 1895; re-en. Sec. 1470, Rev. C. 1907; re-en. Sec. 1779, R.C.M. 1921; Cal. Pol. C. Sec. 2854; re-en. Sec. 1779, R.C.M. 1935; R.C.M. 1947, 32-1514; amd. Sec. 9, Ch. 253, L. 1979.

7-14-2825. Establishment of new ferry near existing ferry. No toll ferry must be established within 1 mile immediately above or below a regularly established ferry unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice required, notice of intention to apply for authority to erect a toll ferry must be served upon the proprietor of the ferry already established, at least 10 days prior thereto, giving the time and place and grounds of such application.

History: En. Sec. 2832, Pol. C. 1895; re-en. Sec. 1469, Rev. C. 1907; re-en. Sec. 1778, R.C.M. 1921; Cal. Pol. C. Sec. 2853; re-en. Sec. 1778, R.C.M. 1935; R.C.M. 1947, 32-1513.

7-14-2826. Regulation of ferry operation — penalties. (1) The board of county commissioners may make rules for the government of ferries prescribing:

(a) how many boats must be kept, their character, and how they are propelled;

(b) the number of individuals to be employed and rules for their supervision;

(c) when and under what circumstances ferries may make trips in the nighttime;

(d) who may be ferried free of toll;
(e) in what cases of danger or peril a crossing is to be;
(f) penalties for violation of rules;
(g) the method of and preference in loading and crossing; and
(h) how and by whom action may be brought to recover penalties.

(2) Subject to the rules, ferry operators shall make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of a ferry shall have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferry operators shall keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance with this subsection is neglected, $25 is forfeited, to be collected, except as provided in 3-10-601, for the use of the road fund of the county.

History: (1)En. Sec. 2826, Pol. C. 1895; re-en. Sec. 1463, Rev. C. 1907; re-en. Sec. 1772, R.C.M. 1921; Cal. Pol. C. Sec. 2894; re-en. Sec. 1772, R.C.M. 1935; Sec. 32-1507, R.C.M. 1947; (2)En. Sec. 2827, Pol. C. 1895; re-en. Sec. 1464, Rev. C. 1907; re-en. Sec. 1773, R.C.M. 1921; re-en. Sec. 1773, R.C.M. 1935; Sec. 32-1508, R.C.M. 1947; (3)En. Sec. 2835, Pol. C. 1895; re-en. Sec. 1472, Rev. C. 1907; re-en. Sec. 1781, R.C.M. 1921; Cal. Pol. C. Sec. 2856; re-en. Sec. 1781, R.C.M. 1935; Sec. 32-1516, R.C.M. 1947; (4)En. Sec. 2836, Pol. C. 1895; re-en. Sec. 1473, Rev. C. 1907; re-en. Sec. 1782, R.C.M. 1921; Cal. Pol. C. Sec. 2858; re-en. Sec. 1782, R.C.M. 1935; Sec. 32-1517, R.C.M. 1947; R.C.M. 1947, 32-1507, 32-1508, 32-1516, 32-1517; amd. Sec. 3, Ch. 557, L. 1987; amd. Sec. 601, Ch. 61, L. 2007.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by Justice's Court, 3-10-601.
County road fund, 7-14-2513.

7-14-2827. Surety bond required. The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of county commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition and that the owner or keeper will faithfully comply with the laws of the state and all legal orders of the board regulating the ferry and pay all damages recovered against the owner or keeper by any person injured or damaged by reason of delay at or defect in the ferry or in any manner resulting from a noncompliance with the laws or lawful orders regulating the ferry. The bond must be approved by the board.

History: En. Sec. 2829, Pol. C. 1895; re-en. Sec. 1466, Rev. C. 1907; re-en. Sec. 1775, R.C.M. 1921; Cal. Pol. C. Sec. 2850; re-en. Sec. 1775, R.C.M. 1935; R.C.M. 1947, 32-1510; amd. Sec. 602, Ch. 61, L. 2007.

Cross-References

Surety bonds, Title 28, ch. 11, part 4.

7-14-2828. Report required. An owner or keeper of a ferry shall report annually to the board of county commissioners from which a license is obtained, under oath, the following facts:

(1) the actual cost of the construction or erection and equipment of the ferry;
(2) the repairs made during the preceding year and the actual cost of the repairs;
(3) the expense of labor and of hiring agents and other costs necessarily incurred with regard to the conduct of the business;
(4) the amount of tolls collected; and
(5) the estimated actual cash value of the ferry, exclusive of the franchise.

History: En. Sec. 2825, Pol. C. 1895; re-en. Sec. 1462, Rev. C. 1907; re-en. Sec. 1771, R.C.M. 1921; Cal. Pol. C. Sec. 2847; re-en. Sec. 1771, R.C.M. 1935; R.C.M. 1947, 32-1506; amd. Sec. 603, Ch. 61, L. 2007.

7-14-2829. Acquisition of land for ferry. When lands are necessary for the construction, erection, or use of a ferry that cannot be procured by agreement between the owner of the ferry and the landowner, the right-of-way and all other lands necessary for the use and construction or erection of the ferry may be acquired by condemnation as provided in Title 70, chapter 30.

History: En. Sec. 2834, Pol. C. 1895; re-en. Sec. 1471, Rev. C. 1907; re-en. Sec. 1780, R.C.M. 1921; Cal. Pol. C. Sec. 2855; re-en. Sec. 1780, R.C.M. 1935; R.C.M. 1947, 32-1515; amd. Sec. 15, Ch. 125, L. 2001.

Cross-References

Eminent domain, Title 70, ch. 30.

7-14-2830. Procedure to administer license tax. The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting the license issued, but the treasurer of such county must annually pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received.

History: **En. Sec. 2830, Pol. C. 1895; re-en. Sec. 1467, Rev. C. 1907; re-en. Sec. 1776, R.C.M. 1921; Cal. Pol. C. Sec. 2851; re-en. Sec. 1776, R.C.M. 1935; R.C.M. 1947, 32-1511.**

7-14-2831. Use of penalties. Penalties recovered under 7-14-2821 through 7-14-2830 must be paid to the county treasury for the use of the general road fund of the county.

History: **En. Sec. 2828, Pol. C. 1895; re-en. Sec. 1465, Rev. C. 1907; re-en. Sec. 1774, R.C.M. 1921; Cal. Pol. C. Sec. 2895; re-en. Sec. 1774, R.C.M. 1935; R.C.M. 1947, 32-1509.**

Cross-References

County road fund, 7-14-2513.

Part 29
Road Improvement Districts (Repealed)

7-14-2901. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 1, Ch. 308, L. 1989; amd. Sec. 1, Ch. 319, L. 1999.**

7-14-2902. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 2, Ch. 308, L. 1989; amd. Sec. 50, Ch. 354, L. 2001.**

7-14-2903. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 3, Ch. 308, L. 1989.**

7-14-2904 through 7-14-2906 reserved.

7-14-2907. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 4, Ch. 308, L. 1989; amd. Sec. 3, Ch. 269, L. 1993.**

7-14-2908. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5, Ch. 308, L. 1989.**

Parts 30 through 40 reserved

Part 41
General Provisions Related to Municipal Trafficways and Public Grounds

Part Cross-References

Costs of discontinuation of trafficway, 7-14-104.

7-14-4101. Municipal authority to establish, alter, and maintain trafficways and public grounds. (1) The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, and public grounds and to vacate the same.

(2) The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: **(1)En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; Sec. 11-906, R.C.M. 1947; (2)En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R.C.M. 1921; re-en. Sec. 5223, R.C.M. 1935; Sec. 84-4736, R.C.M. 1947; R.C.M. 1947, 11-906(part), 84-4736.**

Cross-References

Improvement districts — modification of trafficways, 7-12-4131.
Procedure to discontinue, 7-14-2616.
Maintenance and regulation of public grounds, 7-14-4121.
Change of street grade, Title 7, ch. 14, part 42.
Authorization for indebtedness, 7-16-4104.

7-14-4102. Regulation of trafficways and public grounds. The city or town council may:

(1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horseracing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, skateboarding, rollerblading, or tobogganing on the streets or alleys or other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals.

History: **En. Subds. 8, 9, 10, 40, 41, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.7, 5039.8, 5039.9, 5039.39, 5039.40, R.C.M. 1935; R.C.M. 1947, 11-910, 11-911, 11-912, 11-942, 11-943; amd. Sec. 1, Ch. 287, L. 1995.**

7-14-4103. Regulation of motor vehicles. (1) The council of any incorporated city or town shall have power, by ordinance, to regulate motor vehicles and their speed within the limits of such city or town and to prescribe and enforce fines and penalties for violation of such regulations.

(2) As used in this section, the term "motor vehicles" shall include all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons and engines, fire department vehicles, and police patrol wagons.

History: **(1)En. Sec. 1, Ch. 49, L. 1917; re-en. Sec. 5041, R.C.M. 1921; re-en. Sec. 5041, R.C.M. 1935; Sec. 11-1002, R.C.M. 1947; (2)En. Sec. 2, Ch. 49, L. 1917; re-en. Sec. 5042, R.C.M. 1921; re-en. Sec. 5042, R.C.M. 1935; Sec. 11-1003, R.C.M. 1947; R.C.M. 1947, 11-1002, 11-1003.**

Cross-References

Powers of local authorities, 61-8-103, 61-9-103, 61-12-101.
Reckless driving, 61-8-301, 61-8-715.
Altering of speed limits, 61-8-310.
Parking regulations, 61-8-355.
Persons under influence of alcohol or drugs, 61-8-401.

7-14-4104. Prevention of obstructions on trafficways and public grounds. The city or town council has power to prevent the encumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

History: **En. Subd. 38, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.37, R.C.M. 1935; R.C.M. 1947, 11-940.**

7-14-4105. Lighting and cleaning of trafficways and public grounds. The city or town council has power to:

(1) provide for lighting and cleaning the streets, alleys, and avenues;

(2) regulate the disposition and removal of ashes, garbage, or other offensive matter in any street or alley, on public grounds, or on any premises;

(3) regulate the use of sidewalks and require the owners of the adjoining premises to keep the same free from snow or other obstruction.

History: **En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).**

7-14-4106. Payment for cost of removing waste. The city or town council may levy the cost of the removal provided for in 7-14-4105(2) as a special charge against the property from which the matter was deposited.

History: **En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part); amd. Sec. 52, Ch. 574, L. 2001.**

7-14-4107. Maintenance of trafficways. The city or town council may provide for the maintenance of the streets, alleys, and public places of the city or town and may fix rates to defray the cost of said work as provided in Title 7, chapter 12, part 44.

History: **En. Subd. 69, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.68, R.C.M. 1935; R.C.M. 1947, 11-971; amd. Sec. 18, Ch. 212, L. 1983.**

7-14-4108. Authority to contract for road work when federal funds involved. Whenever highway construction work is to be financed in whole or in part by federal funds, the council, commission, or other governing body of any city or town may contract jointly or independently with the department of transportation, United States federal highway administration, or other federal agency for the construction or reconstruction of highways, roads, and streets, to acquire rights-of-way, and to do any other thing essential and practical in securing the highway, road, and street construction or reconstruction or rights-of-way as may be agreed upon between the council, commission, or other governing body and the department of transportation or federal agency. All contracts for work on highways, roads, and streets which are let pursuant to this authority shall be let by the transportation commission.

History: **En. Sec. 1, Ch. 69, L. 1957; amd. Sec. 1, Ch. 316, L. 1974; R.C.M. 1947, 11-1023; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995.**

Cross-References

Letting of contracts by Transportation Commission, 60-2-111.

7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders a sidewalk, curb, or gutter constructed or an alley approach constructed or replaced, the order must be entered upon the minutes of the council and must name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After issuing an order, the council shall provide a written notice to the owner or agent of the owner and to any purchaser under contract for deed of the property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate.

(4) If the owner or agent of the owner of a lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of the notice to cause the sidewalk, curb, or gutter to be constructed or to cause the alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost of those improvements, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which those improvements are constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs is provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction must be made by special warrants or bonds in a form that is prescribed by ordinance or resolution and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund. The council may provide for the payment of interest annually or semiannually. Except as otherwise expressly provided in 7-14-4110 and this section, the warrants or bonds that the city council authorizes may be issued subject to the terms and security provisions provided in Title 7, chapter 12, parts 41 and 42.

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate pursuant to 17-5-102.

History: **Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part); amd. Sec. 10, Ch. 253, L. 1979; amd. Sec. 1, Ch. 457, L. 1983; amd. Sec. 7, Ch. 526, L. 1983; amd. Sec. 15, Ch. 451, L. 2005.**

7-14-4110. Assessments for costs. (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination of sidewalks, curbs, or gutters or alley approach may be spread over a period not to exceed 20 years. Payments must be made in equal annual installments.

(2) Before the first Monday of October each year, the city council shall adopt a resolution levying an assessment against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination of sidewalks, curbs, or gutters has been constructed under orders of the city council or each lot or parcel of land having access to the property by way of the alley approach that has been constructed under orders of the city council. The resolution levying the assessment must be prepared and certified in the same manner as resolutions levying assessments for the making of improvements in special improvement districts.

History: **Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947;**

Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part); amd. Sec. 2, Ch. 457, L. 1983; amd. Sec. 1, Ch. 159, L. 2007.

Cross-References

Special improvement districts, Title 7, ch. 12, part 41.

7-14-4111. Determination of alley approach. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in 7-14-4109.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; R.C.M. 1947, 11-2226.1(part).

7-14-4112. Change of name of street. (1) Any town or city council may in its judgment, when it appears to the best interest of the town or city and the inhabitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, subject to the conditions provided for in subsection (2), except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter.

(2) The town or city engineer (if there be no such officer, the council may employ one for such purpose) shall prepare a plat showing such subdivisions, streets, and avenues affected by such change, with the appropriate notation of change thereon. Upon approval of such plat by the council and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in subsection (1).

History: En. Secs. 1, 2, Ch. 21, L. 1939; R.C.M. 1947, 11-907, 11-908.

7-14-4113. Use of city road fund. The city treasurer shall hold the fees paid pursuant to 7-14-2512(1)(b) in a separate city road fund which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; R.C.M. 1947, 32-3703(2).

7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part of a street or alley in a city or town, if it can be done without detriment to the public interest, upon:

(a) a petition in writing of all owners of lots on the street or alley; or

(b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and

(ii) approval by a majority vote of the council.

(2) Where the street or alley is to be closed for school purposes, the council may discontinue the street or alley upon a petition signed by 75% of the lot owners on the whole street or alley to be closed.

(3) Before acting upon the petition, a notice must be published, stating when the petition will be acted on and what street or alley or part of a street or alley is asked to be vacated. The notice must be published as provided in 7-1-4127.

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802; amd. Sec. 1, Ch. 78, L. 1989; amd. Sec. 51, Ch. 354, L. 2001.

Cross-References

Vacation of plats, Title 7, ch. 5, part 25; 76-3-305.

7-14-4115. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-4114 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

Cross-References

Vacation of plats, 76-3-305.

7-14-4116 through 7-14-4120 reserved.

7-14-4121. Maintenance and regulation of public grounds. The city or town council has power to provide for enclosing, improving, and regulating all public grounds belonging to the city or town.

History: **En. Subd. 74, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.73, R.C.M. 1935; R.C.M. 1947, 11-976.**

Cross-References

Municipal authority over public grounds, 7-14-4101.

7-14-4122. Construction and maintenance of sidewalks, curbs, and gutters. (1) The city or town council has power to regulate and provide for the construction or repair of sidewalks, foot pavements, curbs, gutters, or any combination thereof.

(2) If the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks, pavements, curbs, gutters, or any combination thereof and the city or town may pay for the same. The amount so paid is a lien upon the lot and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: **En. Subd. 65, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.64, R.C.M. 1935; R.C.M. 1947, 11-967.**

7-14-4123. Regulation of sidewalks. The city or town council has power to prevent the riding or driving of animals or the drawing or riding of vehicles of any kind on the sidewalks of the city or the doing of damage in any way to the sidewalks.

History: **En. Subd. 39, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.38, R.C.M. 1935; R.C.M. 1947, 11-941.**

Part 42
Establishment and Change of Street Grade

7-14-4201. Establishment and alteration of street grade. (1) The city or town council may establish the grade of any street, alley, or avenue.

(2) When the grade has been established, it may not be changed except by a vote of the majority of the council and not until the damage to property owners caused by the change of grade has been assessed and determined by three disinterested appraisers. The appraisers must be appointed by the mayor and confirmed by the council. The appraisers shall make an appraisal, taking into consideration the benefits, if any, to the property, and shall file their report with the city or town clerk within 10 days after receiving notice of their appointment. The amount of damages assessed must be tendered to the owner or the owner's agent before any change of grade is made.

History: **En. Subd. 68, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.67, R.C.M. 1935; R.C.M. 1947, 11-970; amd. Sec. 604, Ch. 61, L. 2007.**

7-14-4202. Payment of damages resulting from change of grade. When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid as is hereinafter provided.

History: **En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907; re-en. Sec. 5300, R.C.M. 1921; re-en. Sec. 5300, R.C.M. 1935; R.C.M. 1947, 11-2601.**

7-14-4203. Determination of damages. (1) If the council of the city or town and the owner of a building are unable to agree upon the amount of damages from the change of a street grade, the council shall appoint three disinterested freeholders of the city or town to appraise the damages.

(2) The appraisers, after being duly sworn, shall appraise the damage and make a written report, signed by at least a majority of them. One copy must be delivered to the clerk of the city or town to be immediately filed in the clerk's office and another copy must be delivered to the owner of the building. The report must be made and delivered within 10 days after the appointment of the appraisers.

History: **Ap. p. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907; re-en. Sec. 5301, R.C.M. 1921; re-en. Sec. 5301, R.C.M. 1935; Sec. 11-2602, R.C.M. 1947; Ap. p. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907;**

re-en. Sec. 5302, R.C.M. 1921; re-en. Sec. 5302, R.C.M. 1935; Sec. 11-2603, R.C.M. 1947; R.C.M. 1947, 11-2602, 11-2603; amd. Sec. 605, Ch. 61, L. 2007.

7-14-4204. Appeal from determination of damages. (1) Within 20 days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court within the county in which such city or town is located a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report.

(2) Upon the filing of the report and the notice of appeal, the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff and the owner of the building as defendant. The question of the amount of damages may be tried by a jury or the court.

(3) The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: (1), (2)En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907; re-en. Sec. 5303, R.C.M. 1921; re-en. Sec. 5303, R.C.M. 1935; Sec. 11-2604, R.C.M. 1947; (3)En. Sec. 4944, Pol. C. 1895; re-en. Sec. 3445, Rev. C. 1907; re-en. Sec. 5304, R.C.M. 1921; re-en. Sec. 5304, R.C.M. 1935; Sec. 11-2605, R.C.M. 1947; R.C.M. 1947, 11-2604, 11-2605.

7-14-4205. Payment of costs. In case the owner of the building appeals and the damages are not increased or in case the city or town appeals and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907; re-en. Sec. 5305, R.C.M. 1921; re-en. Sec. 5305, R.C.M. 1935; R.C.M. 1947, 11-2606.

Cross-References

Costs allowed in civil actions, Title 25, ch. 10.

Part 43
Municipal Regulation of Railways and Street Railroads

7-14-4301. Regulation of railways. (1) The city or town council may grant the right-of-way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, to regulate the running and management of the railroads and to compel the owner of a street or other railroad to keep the street in repair when occupied by the street or other railroad, to regulate the speed of railroad engines, and to require railroad companies to station flag persons at street crossings.

(2) The city or town council may regulate and control the laying of railroad tracks and may prohibit the use of engines and locomotives or regulate the speed of engines and locomotives.

History: (1)En. Subd. 66, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.65, R.C.M. 1935; Sec. 11-968, R.C.M. 1947; (2)En. Subd. 11, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.10, R.C.M. 1935; Sec. 11-913, R.C.M. 1947; R.C.M. 1947, 11-913, 11-968; amd. Sec. 606, Ch. 61, L. 2007.

7-14-4302. Regulation of lighting for railway right-of-way — crossings. (1) The city or town council may require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location of the lampposts.

(2) The city or town council may:

(a) require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the track intersects or crosses any street, alley, or public highway or runs along the same; and

(b) fix and determine the size, kind, and grade of the crossing.

(3) In case the owner of such railroad fails to comply with the requirements, the council may cause the same to be done. The council may assess the expense thereof against the owner, and the expense constitutes a lien on any property belonging to the owner within the city or town and may be collected as other taxes.

History: En. Subd. 12, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.11, R.C.M. 1935; R.C.M. 1947, 11-914; amd. Sec. 11, Ch. 253, L. 1979.

7-14-4303. Authorization for and regulation of street railroads. The city or town council has power to license and authorize the construction and operation of street railroads and to require them to conform to the grade of the street as the same is or may be established.

History: En. Subd. 13, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.12, R.C.M. 1935; R.C.M. 1947, 11-915.

Part 44
Municipal Bus Services

Part Cross-References

Urban transportation districts, Title 7, ch. 14, part 2.

7-14-4401. Provision of bus service. Whenever a city or town is not being served by a bus company or operator operating on a regular schedule and under the jurisdiction of the public service commission or if such service is likely to be discontinued in the immediate future, the city or town council of the incorporated city or town:

(1) may contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation, or leasing of motorbuses and buslines for the transportation of passengers within the corporate limits of such cities and towns and to operate the same to any point or points beyond these limits not to exceed 8 miles measured along the route of the busline;

(2) shall have the power to enter into a contract or contracts or to enter into a lease or a lease and operating agreement with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed 8 miles measured along the route of said busline or buslines.

History: Ap. p. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; Sec. 11-1019, R.C.M. 1947; Ap. p. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; Sec. 11-1021, R.C.M. 1947; R.C.M. 1947, 11-1019(part), 11-1021(part).

7-14-4402. Limit on indebtedness to provide bus service. The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including existing indebtedness, may not at any time exceed the debt limitation established in 7-7-4201. Money may not be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and a majority vote is cast in its favor.

History: En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; R.C.M. 1947, 11-1019(part); amd. Sec. 53, Ch. 614, L. 1981; amd. Sec. 18, Ch. 29, L. 2001.

7-14-4403. Operation of municipal busline. The city or town council or commission has authority to provide for the:

(1) management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of that transportation system;

(2) safe operation of the transportation system, including the adoption of ordinances or resolutions to require motor vehicles to yield the right-of-way to buses reentering the traffic flow; and

(3) enforcement of ordinances or resolutions adopted under subsection (2).

History: En. Sec. 2, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1020; amd. Sec. 1, Ch. 160, L. 1983; amd. Sec. 1, Ch. 246, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 246 inserted (2) and (3) enabling a city or town council or commission to adopt ordinances or resolutions to provide for the safe operation of municipal transportation and to provide for enforcement of the ordinances or resolutions; and made minor changes in style. Amendment effective October 1, 2009.

7-14-4404. Tax levy for contracts to operate bus service. For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to a contract, lease, or lease and operating agreement with an independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for transportation services in excess of the levy allowed by 15-10-420, the council of the city or town shall in the manner prescribed by law submit the question of the additional levy to the qualified electors of the city or town at an election held pursuant to 15-10-425.

History: **En. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 11-1021(part); amd. Sec. 12, Ch. 253, L. 1979; amd. Sec. 51, Ch. 387, L. 1995; amd. Sec. 16, Ch. 495, L. 2001; amd. Sec. 53, Ch. 574, L. 2001.**

7-14-4405. Bids for bus service contracts authorized — operation of bus service. The city or town council shall have power and authority to call for bids from independent carriers for such transportation service authorized by 7-14-4401(2) and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease, or lease and operating agreement.

History: **En. Sec. 4, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1022.**

Part 45
Municipal Parking

7-14-4501. Acquisition, construction, and maintenance of parking areas. A city or town council may:

(1) acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain on the acquired land or on any premises owned or under lease by the city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) charge for the use of parking facilities.

History: **En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part); amd. Sec. 16, Ch. 125, L. 2001.**

Cross-References

Parking Commissions, Title 7, ch. 14, part 46.

7-14-4502. Bond issue to finance parking areas. A city or town council shall have power to:

(1) issue bonds or other securities for the payment of the lots or lands and facilities referred to in 7-14-4501, payable in whole or in part from the revenues of any such parking lots or areas or parking facilities or from other sources; and

(2) pledge, place a charge upon, or otherwise make available as additional security for the payment of such bonds or securities any or all revenues from any or all street parking meters owned or to be owned and controlled by said city or town.

History: **En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).**

Cross-References

Parking Commissions, Title 7, ch. 14, part 46.

7-14-4503 through 7-14-4510 reserved.

7-14-4511. Provision of parking meters in smaller municipalities — ordinance required. The city or town council of any incorporated city or town of 2,500 population or less is hereby empowered to enact an ordinance or ordinances:

(1) to purchase, rent, lease, or otherwise acquire coin-operating parking meters or other devices or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked;

(2) to install, maintain, and operate said meters, devices, or instruments at or near any public street, highway, avenue, or other public place within the corporate limits of such city or town;

(3) to provide for such regulations as necessary to govern the use of its public streets, highways, avenues, or other public places for the purpose of parking automobiles or other vehicles and the use of said meters, devices, or instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices, or instruments are to be used.

History: **En. Sec. 1, Ch. 91, L. 1949; R.C.M. 1947, 11-1015.**

Cross-References

Use of parking meter revenue, 7-14-4643.

7-14-4512. Referendum on parking meters prior to enacting ordinance. An ordinance providing for the purchasing, renting, leasing, or otherwise acquiring or installing, maintaining, operating, or using parking meters, devices, or instruments may not be enacted unless the question of whether or not the ordinance may be enacted has been submitted to the qualified electors of the city or town at a general election or a special election that is held in conjunction with a regular or primary election and that is called for that purpose. An ordinance may not be enacted unless authorized by a majority of the votes cast are in favor of enacting the ordinance.

History: En. Sec. 2, Ch. 91, L. 1949; R.C.M. 1947, 11-1016; amd. Sec. 52, Ch. 387, L. 1995.

Part 46
Parking Commissions

Part Cross-References

Municipal authority — parking areas, 7-14-4501.

7-14-4601. Findings and purpose. (1) It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas and the lack of adequate offstreet parking facilities in some cities is against the public interest.

(2) The purpose of this part is to provide means whereby cities in which additional offstreet parking facilities are considered necessary may obtain and provide same and whereby such cities may regulate onstreet and offstreet parking in a coordinated manner.

History: En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955; amd. Sec. 2, Ch. 77, L. 1975; R.C.M. 1947, 11-3701.

7-14-4602. Definitions. The following terms, wherever used or referred to in this part, shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "City" shall mean the particular city for which a particular commission may be created or which may act as such a commission pursuant to resolution of its legislative body.

(2) "Clause" includes article, section, subsection, paragraph, sentence, or provision.

(3) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(4) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of 7-14-4603 through 7-14-4608.

(5) "Indenture" means ordinance, resolution, or indenture which may be passed, adopted, or entered into by a commission or by the legislative body of a city.

(6) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(7) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(8) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility or any assignee or assignees of such lessor's interest or any part thereof and the state or the United States or any agency of either when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(9) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this part.

(10) "State public body" means the state or any city, commission, or any other subdivision or public body of the state.

History: En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973; R.C.M. 1947, 11-3702.

7-14-4603. Creation of parking commission authorized. A city may create, as provided for in 7-14-4603 through 7-14-4608, a public body to be known as the parking commission of the city. The commission of any city shall not transact any business or exercise any powers under this part unless and until the legislative body of the city shall by resolution declare that there is need for a parking commission to function in such city.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4604. Public nature of parking commission. Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental functions.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4605. Determination of need to create parking commission. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by 100 residents of the city asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4606. Resolution of need required. A city shall not transact any business or exercise any powers of this part unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this part.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4607. Resolution for parking commission to function. In any suit, action, or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4608. Adoption of resolutions — jurisdictional area. Either or both such resolutions referred to in 7-14-4606 and 7-14-4607 may be adopted by the legislative body of a city. If both such resolutions are adopted, they shall clearly specify areas within the city, less than the whole thereof, within which or projects over which the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified but may be changed from time to time by action of both the legislative body and the commission to such extent as may be consistent with obligations to bondholders assumed under this part.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4609. Appointment of commission. (1) Except as provided in subsection (3), when the legislative body of a city first adopts a resolution for a parking commission, the mayor, with the approval of the legislative body, shall appoint not less than five or more than seven electors of the city as members of the commission.

(2) Except as provided in subsection (3), the number of members of the commission, once established, may be changed within the number limits established in subsection (1) by subsequent resolutions of the legislative body of the city. A resolution to reduce the number of commission members may not require resignation of any member prior to completion of the member's appointed term.

(3) The legislative body of a city may designate the board of trustees of a business improvement district appointed pursuant to 7-12-1121 as the parking commission if the area of the business improvement district is generally coterminous with the area designated in the resolution creating the parking commission as being subject to the jurisdiction and control of the parking commission.

History: **En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part); amd. Sec. 1, Ch. 189, L. 1999.**

7-14-4610. Term of office. (1) Except as provided in subsection (3), three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there must be two additional appointments of 2 years and 3 years, respectively.

(2) Except as provided in subsection (3), at the expiration of terms established in subsection (1), members must be appointed for a term of office of 4 years, except that all vacancies occurring

during a term must be filled for the unexpired term. A member shall hold office until a qualified successor has been appointed.

(3) If the board of trustees of a business improvement district has been appointed to serve as the parking commission, the term of office for a trustee serving as a commissioner must be the same as the trustee's term of office as a member of the business improvement district's board of trustees.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part); amd. Sec. 2, Ch. 189, L. 1999.

7-14-4611. Removal of parking commission member. A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4612. Organization and operation of commission. (1) The powers of each commission are vested in the current members of the commission.

(2) The appointing officer shall designate which of the members of the commission is the first presiding officer, but when the office of presiding officer of the commission becomes vacant, the commission shall elect a presiding officer from among its members. The term of office as presiding officer of the commission, unless otherwise prescribed by the legislative body of the city, must be for the calendar year or for that portion of a year remaining after each presiding officer is designated or elected.

(3) Members must receive their actual and necessary expenses, including traveling expenses, and may receive other compensation that the legislative body may prescribe.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part); amd. Sec. 607, Ch. 61, L. 2007.

7-14-4613. Funds for administrative purposes of parking commission. When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city, subject to its fiscal law, may, at that time and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(1).

7-14-4614. Annual audit of financial affairs of parking commission. The financial affairs of the parking commission shall be audited annually by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4615. Reports on commission transactions. The legislative body shall cause:

(1) a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual, or annual intervals as the legislative body may prescribe; and

(2) a summary statement of all its financial affairs to be published at least once annually in a newspaper of general circulation published in the city or, if none is so published, then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4616. Termination of parking commission due to inaction — windup of commission affairs. (1) After the lapse of 4 years from the date of adoption of a resolution declaring the need for a parking commission to function in a city, if such commission shall not have acquired or entered into possession of land for a parking facility or issued bonds, the legislative body of such city may by resolution declare that there is no need for such commission in the community. Thereupon the offices of the members of the commission shall become vacant and the capacity of the commission to transact business or exercise any powers shall be suspended and shall remain suspended until the legislative body thereafter adopts a resolution declaring the need for the commission to function.

(2) After adoption of a resolution declaring there is no need for such commission to function or while any such resolution is in effect, the legislative body of a city shall have power to wind up

the affairs of the commission and shall have title to all property of the commission for the purpose of offstreet parking only, to be leased to and operated by companies, individuals, or corporations.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4617 through 7-14-4620 reserved.

7-14-4621. General powers of parking commission. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to sue and be sued, have a seal, make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(2) to make and from time to time amend and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes thereof;

(3) to select and appoint or remove such officers, agents, counsel, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation;

(4) to exercise all or any part or combination of the powers granted in this part;

(5) to do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of this part.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4622. Powers of parking commission related to provision of parking services. For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, may:

(1) purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest in real or personal property, together with any improvements on real property;

(2) subject to 7-14-4626, acquire by the exercise of the power of eminent domain, as provided in Title 70, chapter 30, any property upon approval of the city council;

(3) sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest in real or personal property;

(4) lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient for offstreet parking;

(5) insure or provide for the insurance of any real or personal property or operation of the parking commission against risks or hazards;

(6) acquire, construct, rent, lease, maintain, and repair real and personal property used for parking services, either on behalf of the parking commission or as an agent of the city, including the leasing of the operation of the offstreet parking;

(7) regulate onstreet parking when it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part); amd. Sec. 17, Ch. 125, L. 2001.

Cross-References

Limitation on power of eminent domain, 7-14-4626.
Parking regulations, 7-14-4628.
Eminent domain, Title 70, ch. 30.

7-14-4623. Transfer of parking commission property to municipality. The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof a resolution transferring the property of the commission to the city. The city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the constitution or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4624. Powers of commission related to financial management. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to receive, control, and order the expenditure of any and all money and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision:

(a) all revenues derived from operations of the commission;

(b) all money appropriated or made available by the city pursuant to this section or otherwise;

(c) the proceeds of all financial aid or assistance by the city, federal, or state governments;

(d) the proceeds of levied assessments;

(e) the proceeds of all revenue bonds issued pursuant to this part by the city for parking facilities;

(2) to invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4625. Limitation on employment powers. The powers of the commission under 7-14-4621(3) shall be subject to all limitations and rights applicable to similar employment by the city unless the legislative body by resolution shall otherwise determine.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4626. Limitation on power of eminent domain. (1) A parking commission may not acquire the property of a public entity without the entity's consent.

(2) A parking commission or the city may not acquire an existing parking facility by the exercise of the power of eminent domain, as provided in Title 70, chapter 30, by a commission or the city except after a public hearing. A notice of the date, time, place, and purpose of the hearing must be published once not less than 10 or more than 20 days prior to the date of the hearing.

History: (1)En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; Sec. 11-3707, R.C.M. 1947; (2)En. Sec. 8, Ch. 223, L. 1951; amd. Sec. 5, Ch. 77, L. 1975; Sec. 11-3708, R.C.M. 1974; R.C.M. 1947, 11-3707(part), 11-3708; amd. Sec. 18, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const; Title 70, ch. 30.

7-14-4627. Leasing of surplus or uneconomical space for incidental purposes. (1) Subject to the limitations imposed by this part, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, each parking commission shall have power to lease for incidental commercial purposes surplus space or space which it is not economical to use for parking purposes, as an incident to the operation of any parking facility.

(2) The city or parking commission shall be prohibited from operating any such additional, secondary, and incidental facilities. Such incidental use or uses must be secondary to the primary use as a parking facility. The commission or the city shall lease such space to private operators at rates comparable to the existing market rate for similar taxable space at the location.

(3) (a) Except as provided in subsection (3)(b), if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall be confined to the street level and/or below street level of such building. Such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular and pedestrian movement if at least two higher levels, each of equal or greater area, are devoted entirely to parking purposes.

(b) Other provisions notwithstanding, the commission or the city may lease air rights above such building.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4628. Nature of onstreet parking regulations. The parking regulations issued pursuant to 7-14-4622(7) may include, without limiting the generality of this provision, the determination of:

(1) parking locations;

(2) variable parking durations;
(3) variable parking rate schedules; and
(4) enforcement policies and procedures.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4629. Manner of operating parking facility. (1) The commission or city may lease any project acquired by it under the provisions of this part to the highest responsible bidder after notice.

(2) If the commission or city shall, by resolution entered upon its minutes, find and determine that the purposes of this part will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking project, subject to the ordinances and rules of the city pertaining to municipal parking projects.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part).

7-14-4630. Notice for bids to lease parking facility. (1) The notice required by 7-14-4629(1) shall consist of the publication of a notice as provided in 7-1-2121 inviting bids.

(2) Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased, and the minimum rental to be paid under such lease.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part); amd. Sec. 26, Ch. 349, L. 1985.

7-14-4631. Compliance with land use laws required. (1) All parking facilities of a commission are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the parking facility is situated.

(2) In the planning and location of any parking facility, a commission is subject to the relationship of the facility to any growth policy or sections of a growth policy for the development of the area in which the commission functions.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part); amd. Sec. 4, Ch. 44, L. 2007.

7-14-4632. Cooperation with other municipal offices. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access, for the purposes of the commission, to the services and facilities of the city planning department, the city engineer, the police department, the fire department, and such other departments and offices of the city as may be appropriate therefor.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4633. Municipality authorized to collect in-lieu payments from parking commission — limitations. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city. This sum shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs or for compliance with any other provisions of indentures securing obligations of the commission.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4634. Charges for use of parking facilities. (1) The commission shall fix the rates, fees, and all other charges to be made for all projects, services, or facilities furnished, acquired, constructed, or completed under this part for the use thereof by any persons or public or private agencies utilizing such projects, services, or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this part, the commission is authorized to change such rates, charges, and fees from time to time as conditions warrant.

(2) All rates, fees, and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses, including insurance costs, and all redemption payments and interest charges on the revenue

bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due.

(3) The commission may provide that the rates, fees, and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only with the terms of the indenture under which the revenue bonds were issued.

History: En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).

7-14-4635. Authority to establish lien on charges for payment of bonds. The commission may provide that bond redemption and the interest payment shall constitute a first, direct, and exclusive charge and lien on all such fees, charges, and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of the project for the acquisition, construction, or completion of which such revenue bonds were issued. All such fees and charges and other revenues, together with the interest thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose so long as such bonds (or any of them) are outstanding and unpaid.

History: En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).

Cross-References

Liens, Title 71, ch. 3, part 1.

7-14-4636 through 7-14-4640 reserved.

7-14-4641. Authority to issue revenue bonds. The commission shall have power to issue revenue bonds in its name or in that of the city.

History: En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; R.C.M. 1947, 11-3711(part).

7-14-4642. Election required to issue revenue bonds. (1) The power to issue revenue bonds as provided in this part is not operative in any city until the legislative body, either at a general election or a special election held in conjunction with a regular or primary election, submits to the electors the question as to whether the legislative body, the commission, or both, are authorized to adopt the revenue bond method of financing projects provided for in this part.

(2) The question must be placed before the electors and notice must be given in the same manner as provided by law for referring ordinances of the city to the electors. The qualifications of electors are the same as those required for voting at municipal elections in the city for elective officers. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this part are controlling, notwithstanding any provision of law to the contrary.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part); amd. Sec. 53, Ch. 387, L. 1995.

7-14-4643. Sources of revenue for payment of revenue bonds. (1) No revenue bonds authorized by 7-14-4641 or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in subsection (2).

(2) A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all onstreet parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments and interest thereon levied to finance the cost of parking facilities under any of the provisions of parts 41 through 45 of chapter 12 and part 47 of this chapter which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid;

(h) from the proceeds of sale upon foreclosure of any mortgage of an offstreet parking facility made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

History: (1)En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; Sec. 11-3711, R.C.M. 1947; (2)En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; Sec. 11-3712, R.C.M. 1947; R.C.M. 1947, 11-3711(part), 11-3712(part).

7-14-4644. Restrictions on use of reserve to make payments on revenue bonds. The funds from which the transfers authorized by 7-14-4643(2)(g) are made must be reimbursed from the next collections of other revenue enumerated in 7-14-4643 that is not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission. This section does not permit the levy of taxes at any time in excess of the deficiency existing in the reserve, but subject to 15-10-420, a tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may be levied.

History: En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; R.C.M. 1947, 11-3712(part); amd. Sec. 54, Ch. 574, L. 2001.

7-14-4645. Power to determine terms and conditions of revenue bonds. (1) Each commission shall have power to determine by resolution, with reference to each issue of revenue bonds to be issued under this part, all the terms and conditions of such bonds and of the sale and issuance thereof and any and all matters necessary or appropriate to be determined in connection therewith, except only as such power is limited by or under the authority of express provisions of this part.

(2) Without excluding the exercising of any other powers under or in any way limiting the generality of the preceding general grant of power or in any way excluding or limiting the exercising of any or all other powers granted by this part, the general power granted by this section shall include and each such commission shall have and in its discretion may exercise the specific powers provided by this part.

History: En. Sec. 13, Ch. 223, L. 1951; R.C.M. 1947, 11-3713.

7-14-4646. Series or divisions of bonds permitted. (1) The commission may issue revenue bonds in series or may divide any issue into one or two or more divisions and fix different maturities or dates of such bonds, fix different rates of interest, or prescribe different terms and conditions for the bonds of the several series or divisions.

(2) It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the commission at or prior to the issue thereof.

(3) The commission may provide for successive issues or may provide for one maximum issue.

History: En. Sec. 16, Ch. 223, L. 1951; R.C.M. 1947, 11-3716.

7-14-4647. Interest on revenue bonds. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds, the commission may fix limitations or restrictions on the payment of interest.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).

7-14-4648. Payment of principal and interest. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).

7-14-4649. Maturity dates of revenue bonds. (1) Bonds may be serial bonds or sinking fund bonds, with such maturities as the commission may determine.

(2) Bonds shall bear dates prescribed by the commission. No bond by its terms shall mature in more than 40 years from its own date, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

History: En. Sec. 19, Ch. 223, L. 1951; R.C.M. 1947, 11-3719.

7-14-4650. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed, or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951; amd. Sec. 7, Ch. 401, L. 1973; R.C.M. 1947, 11-3718.

7-14-4651. Redemption of revenue bonds. Bonds may be callable upon such terms and conditions, upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).

7-14-4652. Details relating to sale of revenue bonds. (1) The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than 95% of their par or face value.

(2) Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction, or completion of which the bonds have been issued and for a period of not to exceed 2 years thereafter, as provided for in the indenture.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4653. Temporary or interim bonds. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates, or receipts of any denomination whatsoever, with or without coupons, to be exchanged for definitive bonds when ready for delivery or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4654. Exemption from certain state taxes. Revenue bonds issued pursuant to this part and the interest or income from those bonds are exempt from all taxation in this state, other than estate taxes.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part); amd. Sec. 3, Ch. 9, Sp. L. May 2000.

Cross-References

Adjusted gross income, 15-30-2110.

7-14-4655. Authorization to enter into indentures. (1) The commission may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, and interchange of such bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded.

(2) Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture to the extent that such provisions do not conflict with provisions stated in the bonds.

(3) Reference on the face of the bonds to such indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4656. Contents of indenture. (1) An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder.

(2) An indenture may include any or all the following clauses relating to the bonds issued thereunder:

(a) requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture;

(b) requiring the commission to make all repairs, renewals, and replacements necessary to the operation of the project and to keep it at all times in good repair;

(c) requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights;

(d) requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials, and supplies or other charges which if unpaid might become a lien or charge upon the revenues or any part thereof of any project acquired, constructed, or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds;

(e) limiting, restricting, or prohibiting any right, power, or privilege of the commission to mortgage or otherwise encumber, sell, lease, or dispose of any project constructed from the proceeds of the bonds or from other proceeds or to enter into any lease or agreement which impairs or impedes the operation of such project or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues;

(f) requiring the commission to fix, prescribe, and collect fees, tolls, rentals, or other charges in connection with the services and facilities furnished from the project acquired, constructed, or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund, or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project;

(g) requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon or to any reserve or other fund created for the further protection of the bonds and to apply such revenues or cause them to be applied only as provided in the indenture;

(h) limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof or more than one of such projects;

(i) limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing, or completing any improvement or any part thereof;

(j) requiring, specifying, or limiting the kind, amount, and character of insurance to be maintained by the commission on any project or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected;

(k) providing the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(l) designating the rights, limitations, powers, and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture;

(m) prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding;

(n) providing for such other acts and matters as may be necessary or convenient or desirable in order to secure the bonds or to make the bonds more marketable.

History: **(1), (2)(a) thru (2)(m)En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 164, L. 1963; Sec. 11-3714, R.C.M. 1947; (2)(n)En. Sec. 15, Ch. 223, L. 1951; Sec. 11-3715, R.C.M. 1947; R.C.M. 1947, 11-3714(part), 11-3715(part).**

7-14-4657. Special provisions relating to indenture clause dealing with amendment and modification. (1) With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission; by any department, political subdivision, or agency of the state; or by any public corporation, municipality, district, or political subdivision shall not be counted as outstanding bonds or be entitled to vote or assent but shall, nevertheless, be subject to any such modification or amendment.

(2) Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

History: **En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).**

7-14-4658. Incorporation by reference of indenture in all contracts. Every contract entered into by the commission for the use of any project or the services or facilities thereof acquired, constructed, or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued.

History: **En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; R.C.M. 1947, 11-3723(part).**

7-14-4659. Funding and refunding bonds authorized. (1) The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby and, in addition, for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds and the issuance of such funding or refunding bonds.

(2) All provisions of this part applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale, or exchange thereof.

History: **Ap. p. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; Sec. 11-3720, R.C.M. 1947; Ap. p. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; Sec. 11-3721, R.C.M. 1947; R.C.M. 1947, 11-3720(part), 11-3721(part).**

7-14-4660. Expenses which may be paid by means of funding or refunding bonds. The expenses referred to in 7-14-4659(1) include:

(1) the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold;

(2) any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof; and

(3) the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement.

History: **En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).**

7-14-4661. Bonds to be negotiable. All bonds issued under the provisions of this part shall be fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: **En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).**

Cross-References

U.C.C. investment securities, Title 30, ch. 8.

7-14-4662. Bonds as legal investments. All bonds issued under this part shall be legal investments for both public and private funds.

History: **En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).**

7-14-4663. Authorization to designate trustee for bondholders. The commission may designate a bank or trust company as a trustee for the holders of bonds issued hereunder, may authorize the trustee to act on behalf of the holders of the bonds and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders, and may fix and determine the conditions upon which any trustee shall receive, hold, or disburse any or all revenues collected for or on account of the bondholders. The authority may prescribe the duties and powers of such trustee with respect to the payment of principal and interest on the bonds, the redemption of the bonds, the registration and discharge from registration of the bonds, and the management of any sinking fund or other funds provided as security for the bonds.

History: En. Sec. 15, Ch. 223, L. 1951; R.C.M. 1947, 11-3715(part).

7-14-4664. Rights of obligees. (1) An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) by mandamus, suit, action, or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this part;

(b) by suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of said commission.

(2) A commission shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds the right (in addition to all rights that may otherwise be conferred), upon the happening of an event or default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(a) to cause possession of any parking facility or any part thereof to be surrendered to any such obligee;

(b) to obtain the appointment of a receiver of any parking facility of said commission or any part thereof and of the rents and profits therefrom;

(c) to require said commission and the members and employees thereof to account as if it and they were the trustees of an express trust.

History: (1)En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; Sec. 11-3723, R.C.M. 1947; (2)En. Sec. 24, Ch. 223, L. 1951; Sec. 11-3724, R.C.M. 1947; R.C.M. 1947, 11-3723(part), 11-3724(part).

7-14-4665. Role of appointed receiver. If a receiver is appointed pursuant to 7-14-4664(2)(b), the receiver may enter and take possession of the parking facility or any part of the facility, operate and maintain the facility, and collect and receive all fees, rents, revenue, or other charges arising from the facility. The receiver shall keep the money in a separate account or accounts and apply the money in accordance with the obligations of the commission as the court directs.

History: En. Sec. 24, Ch. 223, L. 1951; R.C.M. 1947, 11-3724(part); amd. Sec. 608, Ch. 61, L. 2007.

7-14-4666. Exemption from execution for property of parking commission — exception. (1) Except as provided in subsection (2), all real property of a commission shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a commission be a charge or lien upon its real property.

(2) The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of a commission or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by a commission on its rents, fees, or revenues.

History: En. Sec. 25, Ch. 223, L. 1951; R.C.M. 1947, 11-3725.

Part 47
Pedestrian Malls and Offstreet Parking Facilities

7-14-4701. Authority to establish pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may establish pedestrian malls.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4702. Control of traffic on pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4703. Provision for payment of damages due to creation of pedestrian mall. When the public interest or convenience requires, the governing body of a municipality may pay, from general funds of the municipality or other available money or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. The resolution of intention must contain a statement that, subject to 15-10-420, an assessment will be levied to pay the whole or a stated portion of damages, if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part); amd. Sec. 43, Ch. 584, L. 1999.

7-14-4704. Construction of improvements related to pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may construct improvements on public streets that have been or will be established as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, restrooms, child-care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing municipally owned works, improvements, or facilities on such streets. The improvements or structures may be attached to abutting private buildings or structures provided that the improvements or structures are located on public property.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4705 through 7-14-4710 reserved.

7-14-4711. Authorization for improvement districts for pedestrian malls, offstreet parking, parkings, and parkways. (1) An improvement district may be formed for the sole purpose of operating, maintaining, repairing, and improving pedestrian malls, offstreet parking facilities, and parkings and parkways.

(2) Subject to the powers granted and the limitations contained in this part, the powers and duties of the municipality and the procedure to be followed are as provided in parts 41 through 44 of chapter 12 for other types of special improvement districts.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(3), (4).

Cross-References

Leasing offstreet parking facilities, 7-14-4731.

7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-14-4711 through 7-14-4723 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, 7-12-4108 through 7-12-4110, 7-12-4112 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(5); amd. Sec. 13, Ch. 229, L. 1995; amd. Sec. 52, Ch. 354, L. 2001; amd. Sec. 18, Ch. 277, L. 2003.

7-14-4713. Estimates of expenses — tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district that are provided for by the levy and collection of ad valorem taxes upon the taxable value of all the real and personal property in the district;

(b) publish notice of the estimates; and

(c) have hearings on the statements and estimates and adopt them as provided for incorporated cities and towns by 7-12-4104, 7-12-4106, 7-12-4110, 7-12-4112, 7-12-4113, and 7-12-4117.

(2) Subject to 15-10-420, the governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(6); amd. Sec. 44, Ch. 584, L. 1999.

7-14-4714. Manner of financing district for pedestrian mall or offstreet parking. An improvement district formed for the purpose of establishing a pedestrian mall or offstreet parking may be financed in accordance with the provisions of 7-12-4161 through 7-12-4168, 7-12-4173, and 7-12-4175 and in accordance with the methods of financing set forth in Title 7, chapter 7, part 44.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(7); amd. Sec. 6, Ch. 453, L. 1993.

7-14-4715. Authorization for issuance of bonds by improvement districts for pedestrian malls or offstreet parking. An improvement district formed for pedestrian malls or offstreet parking shall be authorized to issue improvement bonds.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(part).

7-14-4716. Procedure to issue bonds. (1) When the governing body determines that improvement bonds are to be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which the bonds will bear. A description of the bonds, including the manner of repayment, shall be inserted in all notices of the proceedings required to be published or posted. A like description of the bonds shall be included in the warrant.

(2) All other proceedings for the work up to and including the approval of the assessment by the governing body and including delivery of the assessment to the contractor, demand of payment of the several assessments, and the return and record thereof shall be in all respects as provided in this part and parts 41 and 42 of chapter 12.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(a), (b); amd. Sec. 13, Ch. 253, L. 1979.

7-14-4717. List of unpaid assessments. After expiration of the prescribed time from the date of the warrant and after the treasurer has recorded the return, the treasurer shall make and certify to the clerk and recorder a complete list of all unpaid assessments that amount to $25 or more upon any assessment.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(a); amd. Sec. 609, Ch. 61, L. 2007.

7-14-4718. Removal of property from list. (1) If any person before certification of the list to the clerk and recorder presents to the treasurer an affidavit that the person is the owner of a lot on the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that the person does not desire a bond to be issued for the assessment upon the lot, then the assessment may not be included in the list and remains collectible as provided by parts 41 and 42 of chapter 12 and this part.

(2) Failure to file the notice bars any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(b); amd. Sec. 610, Ch. 61, L. 2007.

7-14-4719. Presentation of list to governing body — issuance of bonds. The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon by resolution direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds and the times when payable. The resolution shall also fix the place, if any, other than the office of the treasurer at which the bonds and the interest thereon shall be payable.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4720. Details of bonds. (1) The number and denomination of the bonds and the times when payable shall be fixed so that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding 25 years and 3 months from the date of the bonds, but any fractional amounts may be added to the amount due in any year so that the amounts due in all other years shall be in equal multiples of $100 each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at $100 or some multiple thereof not exceeding $1,000.

(2) The bonds shall be issued as of the date of the warrant and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring 90 days after the date of the bond and shall be for the interest accrued at that time.

(3) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4721. Assessments converted to bond liability. (1) The treasurer, at the time the treasurer certifies the list of unpaid assessments to the clerk and recorder, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and all assessments of $25 or more cease to be payable in cash and are payable only in equal annual installments on December 1 in each year in which the bonds become due. The governing body may provide a plan for collection of the annual installment in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed remains in full force and effect for 2 years after the last installment on the assessment becomes due or until the assessment is fully paid.

(2) The number of installments in which the assessment is payable must correspond to the number of years in which there are bonds to be paid, but the total number of installments may not exceed 25.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(a), (c); amd. Sec. 611, Ch. 61, L. 2007.

7-14-4722. Treatment of installments due on bonds. (1) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(2) All assessments of $25 or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1 and December 1 of each year immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(b), (d).

7-14-4723. Advance payment of installments. The governing body may provide for receiving payment of the installments of the assessment before they become due and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: **En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(e).**

7-14-4724 through 7-14-4730 reserved.

7-14-4731. Authorization for improvement districts to lease and operate offstreet parking facilities. (1) In addition to the purposes for which an improvement district may be formed under the provisions of 7-12-4301, 7-14-4701, and 7-14-4711, an improvement district may be formed for the sole purpose of leasing real property to be used as offstreet parking sites; for the improvement of such offstreet parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards, and other appliances for the purpose of lighting and beautifying the offstreet parking areas and entrances thereto; and for the operation and maintenance thereof.

(2) Subject to the powers granted and the limitations contained in this section, 7-12-4131, 7-12-4301(2), 7-12-4327, 7-14-4701 through 7-14-4704, 7-14-4711 through 7-14-4714, and 7-14-4733 through 7-14-4737, the powers and duties of the governing body of the municipality and the procedure to be followed shall be as provided in parts 41 and 42 of chapter 12 for other types of special improvement districts.

(3) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of offstreet parking sites and the improvement, operation, and maintenance of same.

(4) The formation of an improvement district for offstreet parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).**

7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-12-4114 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, 7-12-4108 through 7-12-4110, 7-12-4112 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance of sites is signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district and is presented to the governing body, the governing body shall adopt a resolution of intention ordering the proposed improvement and publish the resolution pursuant to the provisions of 7-12-4104 and 7-12-4106.

History: **En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.5; amd. Sec. 14, Ch. 229, L. 1995; amd. Sec. 53, Ch. 354, L. 2001; amd. Sec. 19, Ch. 277, L. 2003.**

7-14-4733. Authority to enter lease agreements. (1) After the formation of a special improvement district pursuant to the provisions of 7-12-4104 and 7-12-4106 as modified in 7-14-4732 and after having acquired jurisdiction to order the improvement pursuant to 7-12-4114, the governing body may:

(a) in addition to ordering the improvements set forth in 7-14-4731(1), enter into lease agreements for property within the limits of the assessment district for use as offstreet parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine and which lease agreements may provide that same may be terminated by either party upon 6 months' prior written notice; and

(b) contract for the operation and maintenance thereof.

(2) The governing body may enter into such lease agreements and contract for the operation and maintenance of such offstreet parking sites without the publication of notice and invitation for bids.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(c).**

7-14-4734. Expense estimate — assessments and tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district that are provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice of the estimates; and

(c) have hearings and adopt an ordinance on the estimates at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) Subject to 15-10-420, the governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part); amd. Sec. 14, Ch. 253, L. 1979; amd. Sec. 45, Ch. 584, L. 1999; amd. Sec. 55, Ch. 574, L. 2001.**

7-14-4735. Prohibition on issuance of improvement bonds. An improvement district formed under provisions of 7-14-4731 shall not be authorized to issue improvement bonds.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).**

7-14-4736. Participation by municipality. If the municipality is willing to participate in the cost of leasing, improving, operating, or maintaining the offstreet parking sites in an improvement district established pursuant to 7-14-4731, the governing body may by resolution order the participation, and the amount of participation is not subject to the limitations of 7-12-4102 and 7-12-4132.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part); amd. Sec. 37, Ch. 42, L. 1997.**

7-14-4737. Deletion of territory from offstreet parking district. If in the opinion of the governing body any portion of the territory of a district formed under 7-14-4731 is no longer benefited by the offstreet parking sites provided, the governing body may by resolution summarily delete from the district formed under 7-14-4731 any such area and may form a new district from the balance of the original district formed under 7-14-4731.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(h).**

Part 48
Air Transportation

7-14-4801. Acquisition of lots or lands for aircraft. A city or town council may acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for landing or parking of aircraft, within or outside of the corporate limits of the municipality. The city or town council may exercise municipal jurisdiction over the lots or lands acquired pursuant to this section, even though the lots or lands or any portion of the lots or lands is outside of the corporate limits of the municipality.

History: **En. Subd. 84, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.83, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965; R.C.M. 1947, 11-986(part); amd. Sec. 19, Ch. 125, L. 2001; amd. Sec. 1, Ch. 300, L. 2005.**

Cross-References

Municipal airports, Title 67, ch. 10.

Part 49
Easements and Rights-of-Way

7-14-4901. Purchase of historic easement across county land for benefit of private land. If a historic easement or right-of-way for access to private land exists across county land, the person owning the private land may purchase the nonexclusive easement as a permanent, nonexclusive easement. The board of county commissioners shall sell a permanent, nonexclusive easement upon receipt of the fair market value of the easement and proof of the existence of the easement or right-of-way and the purpose and proposed purchaser's use of the nonexclusive easement.

History: En. Sec. 2, Ch. 107, L. 1999.

CHAPTER 15
HOUSING AND CONSTRUCTION

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Part 44 — Municipal Housing Authorities

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Parts 1 through 20 reserved

Part 21
County Housing Authorities

7-15-2101. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in rural areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such rural areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such rural areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).

7-15-2102. Petition to create county housing authority — hearing and notice. (1) Any 25 residents of a county may file a petition with the county clerk setting forth that there is a need for a housing authority to function in the county.

(2) Upon the filing of such a petition, the county clerk shall give notice of the time, place, and purpose of a public hearing at which the board of county commissioners will determine the need for an authority in the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2103. Notice of hearing on petition. The notice required by 7-15-2102 shall be given at the county's expense by publishing a notice as provided in 7-1-2121.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part); amd. Sec. 27, Ch. 349, L. 1985.

7-15-2104. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-2102 and 7-15-2103, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2105. Decision of board of county commissioners. (1) After such a hearing, the board of county commissioners shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the county; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof.

(2) If it shall determine that either or both of the above-enumerated conditions exist, the board shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority.

(3) If the board, after a hearing as aforesaid, shall determine that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2106. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2107. Application for incorporation. (1) The commissioners of the authority shall present to the secretary of state an application signed by them that must set forth without any detail other than the mere recital:

(a) that a notice has been given and public hearing has been held and that the board of county commissioners made the determination provided for in 7-15-2105 after the hearing and appointed them as commissioners;

(b) the name and official residence of each commissioner, together with a certified copy of the appointment evidencing the commissioner's right to office, the date and place of induction into and taking the oath of office, and that the commissioners desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name that is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application must be subscribed and sworn to by each commissioner before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that the officer personally knows the commissioner and knows the commissioner to be an officer as asserted in the application and that the commissioner subscribed and swore to the application in the officer's presence.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part); amd. Sec. 612, Ch. 61, L. 2007.

7-15-2108. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall receive and file it and shall record it in an appropriate book of record in the secretary of state's office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the certificate with the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part); amd. Sec. 613, Ch. 61, L. 2007.

7-15-2109. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-2107 and 7-15-2108, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2110. Presumption of regularity in creation of county housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(7).

7-15-2111. Area of operation of county housing authority — inclusion of municipalities. (1) The area of operation of a county housing authority includes the county but does not include any city unless a resolution has been adopted by the governing body of the city and by any authority established and authorized to exercise its powers in the city declaring that there is need for the county authority to exercise its powers within that city. The resolution is not effective until it has been approved by a majority vote of the electors within the corporate limits of the city or town voting either at a special election held in conjunction with a regular or primary election or at a general election.

(2) If, after the adoption of a resolution or resolutions, an authority is established for any city within the county, the county authority may not initiate any further housing projects within the city without the consent by resolution of the governing body of the city and of the authority established for the city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part); amd. Sec. 54, Ch. 387, L. 1995.

7-15-2112. Administration and operation of county housing authority — application of municipal laws. (1) The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor.

(2) Except as otherwise provided in this part, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties, and limitations provided for housing authorities created for cities and the commissioners of such housing authorities, and for such purposes, unless a different meaning clearly appears from the context:

(a) the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners";

(b) the term "city clerk" as used therein shall be construed as meaning "county clerk";

(c) the term "city" as used therein shall be construed as meaning "county"; and

(d) the term "ordinance" shall be construed as meaning "resolution".

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27B, R.C.M. 1935; amd. Sec. 2, Ch. 281, L. 1971; amd. Sec. 2, Ch. 259, L. 1974; R.C.M. 1947, 35-129.

7-15-2113. County housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-2114. Certain laws controlling. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part are controlling.

History: En. Sec. 7, Ch. 153, L. 1941; R.C.M. 1947, 35-134; amd. Sec. 15, Ch. 253, L. 1979.

7-15-2115. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-2116 through 7-15-2119 reserved.

7-15-2120. Authorization for counties to furnish assistance in the rehabilitation of private dwellings. If it has determined that unsanitary or unsafe privately owned dwellings exist in the unincorporated area of the county and it has further determined that the owners of such dwellings are unable under the prevailing market conditions to finance replacement or rehabilitation of their dwellings without assistance, the board of county commissioners may:

(1) using the funds provided in subsection (2), finance the replacement or rehabilitation of such unsanitary or unsafe privately owned dwellings through the use of grants of funds or property, direct loans, loan guarantees, and any other means;

(2) accept gifts of property or apply for and accept grants, contributions, and any other form of financial assistance from the federal government or the state or other public body or from any other public or private source for the purposes of this section and 7-15-2101; and

(3) enter into and carry out contracts in connection with activities under subsection (1) or (2).

History: En. Sec. 3, Ch. 363, L. 1985.

Cross-References

Home weatherization programs, Title 90, ch. 4, part 2.

7-15-2121. Authorization for rural housing projects. Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants, and exercise their other powers to provide housing for rural residents of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part); amd. Sec. 1, Ch. 363, L. 1985.

7-15-2122. Operation of rural housing projects. (1) In connection with the projects authorized by 7-15-2121, such housing authorities may enter into such leases or purchase agreements, accept such conveyances, and rent or sell dwellings forming part of such projects to or for rural residents of low income as such housing authority deems necessary in order to assure the achievement of the objectives of this part.

(2) Such leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of lands described in any such instrument. The covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate.

(3) Nothing contained in this section and 7-15-2121 shall be construed as limiting any other powers of any housing authority, except that no more than 2 acres of land per dwelling, together with the dwelling houses thereon provided for under the provisions of this part, shall be exempt from taxation and that upon title to said 2 acres of land and the dwelling houses thereon passing to private ownership, the said land and the dwelling houses thereon shall be restored to the tax rolls and be subject to taxation.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part); amd. Sec. 2, Ch. 363, L. 1985.

7-15-2123. Housing applications by farmers. (1) The owner of any farm operated or worked upon by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income.

(2) Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27D, R.C.M. 1935; R.C.M. 1947, 35-131.

7-15-2124. Definition of term farmers of low income. "Farmers of low income" shall mean persons or families who, at the time of their admission to occupancy in a dwelling of the authority:

(1) live under unsafe or unsanitary housing conditions;

(2) derive their principal income from operating or working upon a farm; and

(3) had an aggregate average annual net income for the 3 years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe, and sanitary housing without overcrowding.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27E, R.C.M. 1935; R.C.M. 1947, 35-132.

Parts 22 through 40 reserved

Part 41
General Provisions Related to Municipal Housing and Construction

7-15-4101. Numbering of houses and lots. The city or town council has power to regulate the numbering of houses and lots and to change the same.

History: En. Subd. 14, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.13, R.C.M. 1935; R.C.M. 1947, 11-916.

7-15-4102. Findings and policy with regard to unsanitary and unsafe private dwellings. (1) It is hereby declared that:

(a) unsanitary or unsafe privately owned dwelling accommodations exist in urban areas throughout the state, and these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, morals, and welfare of the citizens of the state and impair economic values;

(b) in many instances, the owners of such accommodations, due to poverty, unavailability of credit, and increased costs, are unable to finance the rehabilitation of their dwellings; and

(c) the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe and unsanitary dwellings, and such assistance is a public use and purpose for which public money may be spent.

(2) The necessity for the provisions of 7-15-4103 is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(1).

7-15-4103. Authorization for municipalities to furnish assistance in the rehabilitation of private dwellings. When it has determined that unsanitary or unsafe privately owned dwelling accommodations exist within the limits of the city or town and when it has further determined that the owners of such accommodations are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any municipal corporation:

(1) may finance the rehabilitation of such unsanitary or unsafe privately owned dwelling accommodations through the use of grants of funds or property, direct loans, loan guarantees, and other means;

(2) may apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government or the state, county, or other public body or from any other public or private source for the purpose of this section and 7-15-4102; and

(3) may enter into and carry out contracts in connection therewith.

History: **En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(2).**

Cross-References

Home weatherization programs, Title 90, ch. 4, part 2.

7-15-4104 through 7-15-4120 reserved.

7-15-4121. Adoption of building, electrical, and plumbing codes. The governing body of an incorporated city or town may adopt technical building, electrical, and plumbing codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: **En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).**

7-15-4122. Repealed. Sec. 156, Ch. 370, L. 1987.

History: **En. Subd. 51, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.50, R.C.M. 1935; R.C.M. 1947, 11-953.**

7-15-4123. Inspection of building materials. The city or town council has power to provide for the inspection and measuring of lumber and other building materials.

History: **En. Subd. 57, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.56, R.C.M. 1935; R.C.M. 1947, 11-959.**

7-15-4124. Entrances and safety exits for buildings. The city or town council has power to:

(1) compel the owner of a building to erect fire escapes and proper exits and entrances when necessary for safety;

(2) regulate the construction of entrances of basements, cellars, and other floors to buildings from the sidewalks.

History: **(1)En. Subd. 67, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.66, R.C.M. 1935; Sec. 11-969, R.C.M. 1947; (2)En. Subd. 70, Sec. 5039, R.C.M. 1921, amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1947; Sec. R.C.M. 1947, 11-969, 11-972(part).**

7-15-4125. Repair of damaged structures. The city or town council has power to require the owner of a sidewalk, house, or other structure which is dangerous to passers-by to repair or remove the same after notice.

History: **En. Subd. 72, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.71, R.C.M. 1935; R.C.M. 1947, 11-974.**

7-15-4126. Regulation of partition fences and party walls. The city or town council has power to regulate partition fences and party walls not already constructed.

History: **En. Subd. 50, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.49, R.C.M. 1935; R.C.M. 1947, 11-952.**

Part 42
Urban Renewal

7-15-4201. Short title. This part and part 43 shall be known and may be cited as the "Urban Renewal Law".

History: **En. Sec. 20, Ch. 195, L. 1959; R.C.M. 1947, 11-3920.**

Cross-References

"School district" — community college district, 20-15-403.

7-15-4202. Existence of blighted areas and resulting problems — statement of policy. It is hereby found and declared:

(1) that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state, exist in municipalities of the state;

(2) that the existence of such areas:

(a) contributes substantially and increasingly to the spread of disease and crime and depreciation of property values;

(b) constitutes an economic and social liability;

(c) substantially impairs or arrests the sound growth of municipalities;

(d) retards the provision of housing accommodations;

(e) aggravates traffic problems; and

(f) substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and

(3) that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4203. Need for redevelopment and rehabilitation of blighted areas. It is further found and declared:

(1) that certain of such blighted areas or portions thereof may require acquisition, clearance, and disposition subject to use restrictions as provided in this part, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation;

(2) that other areas or portions thereof may, through the means provided in this part, be susceptible of rehabilitation in such a manner that the conditions and evils enumerated in 7-15-4202 may be eliminated, remedied, or prevented; and

(3) that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4204. Interpretation. (1) The powers conferred by part 43 and this part are for public uses for which public money may be expended and the power of eminent domain may be exercised as provided in Title 70, chapter 30. The legislature finds and declares that necessity in the public interest exists for the provisions enacted in part 43 and this part concerning urban renewal.

(2) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part); amd. Sec. 20, Ch. 125, L. 2001; amd. Sec. 1, Ch. 441, L. 2007.

7-15-4205. Scope. Insofar as the provisions of this part and part 43 are inconsistent with the provisions of any other law, the provisions of this part and part 43 shall be controlling. The powers conferred by this part and part 43 shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959; R.C.M. 1947, 11-3919(part).

7-15-4206. Definitions. The following terms, wherever used or referred to in part 43 or this part, have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" means a public agency created by 7-15-4232.

(2) "Blighted area" means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, that substantially impairs or arrests the sound growth of the city or its environs, that retards the provision of housing accommodations, or that constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation, deterioration, age obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions that endanger life or property by fire or other causes; or

(o) any combination of the factors listed in this subsection (2).

(3) "Bonds" means any bonds, notes, or debentures, including refunding obligations, authorized to be issued pursuant to part 43 or this part.

(4) "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

(5) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" means the council or other legislative body charged with governing the municipality.

(7) "Mayor" means the chief executive of a city or town.

(8) "Municipality" means any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality elects to undertake activities on an annual increment basis.

(10) "Obligee" means any bondholder or agent or trustee for any bondholder or lessor conveying to the municipality property used in connection with an urban renewal project or any assignee or assignees of the lessor's interest or any part of the interest and the federal government when it is a party to any contract with the municipality.

(11) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" means the state or any municipality, township, board, commission, district, or other subdivision or public body of the state.

(13) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or other activities concerning dwellings in the municipality.

(14) "Public use" means:

(a) a public use enumerated in 70-30-102; or

(b) a project financed by the method provided for in 7-15-4288.

(15) "Real property" means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

(16) "Redevelopment" may include:

(a) acquisition of a blighted area or portion of the area;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan. If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.

(17) (a) "Rehabilitation" may include the restoration and renewal of a blighted area or portion of the area in accordance with an urban renewal plan by:

(i) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(ii) acquisition of real property and demolition or removal of buildings and improvements on the property when necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(iii) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(iv) subject to 7-15-4259(4), the disposition of any property acquired in the urban renewal area, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan.

(b) Rehabilitation may not include the development of the condemned area in a way that is not for a public use if the property is condemned pursuant to Title 70, chapter 30.

(18) "Urban renewal area" means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

(19) "Urban renewal plan" means a plan for one or more urban renewal areas or for an urban renewal project. The plan:

(a) must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) must be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(20) (a) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan.

(b) An urban renewal project may not include using property that was condemned pursuant to Title 70, chapter 30, for anything other than a public use.

History: **En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; R.C.M. 1947, 11-3901(part); amd. Secs. 2, 34, Ch. 582, L. 1999; amd. Sec. 2, Ch. 441, L. 2007.**

7-15-4207. Prohibition against discrimination. For all of the purposes of this part and part 43, a person may not be subjected to discrimination because of sex, race, creed, religion, age, physical or mental disability, color, or national origin.

History: **En. Sec. 17, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1977; R.C.M. 1947, 11-3917; amd. Sec. 16, Ch. 253, L. 1979; amd. Sec. 4, Ch. 472, L. 1997.**

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

7-15-4208. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this part and part 43, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this part and part 43, including the formulation of a workable program; the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality); the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

History: **En. Sec. 3, Ch. 195, L. 1959; R.C.M. 1947, 11-3903.**

7-15-4209. Development of workable urban renewal program. (1) A municipality, for the purposes of this part and part 43, may formulate a workable program for utilizing appropriate private and public resources:

(a) to eliminate and prevent the development or spread of blighted areas;

(b) to encourage needed urban rehabilitation;

(c) to provide for the redevelopment of such areas; or

(d) to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program.

(2) Such workable program may include, without limitation, provision for:

(a) the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards;

(b) the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements; by encouraging voluntary rehabilitation; and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and

(c) the clearance and redevelopment of blighted areas or portions thereof.

History: **En. Sec. 4, Ch. 195, L. 1959; R.C.M. 1947, 11-3904.**

7-15-4210. Resolution of necessity required to utilize provisions of part. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this part and part 43 until after its local governing body shall have adopted a resolution finding that:

(1) one or more blighted areas exist in such municipality; and

(2) the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: **En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965; R.C.M. 1947, 11-3905.**

7-15-4211. Preparation of comprehensive development plan for municipality. For the purpose of approving an urban renewal plan and other municipal purposes, authority is hereby vested in every municipality:

(1) to prepare, to adopt, and to revise from time to time a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings);

(2) to establish and maintain a planning commission for such purpose and related municipal planning activities; and

(3) to make available and appropriate necessary funds therefor.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4212. Preparation of urban renewal plan. The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4213. Review of urban renewal plan by planning commission. (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the growth policy or parts of the growth policy for the development of the municipality as a whole if a growth policy has been adopted pursuant to Title 76, chapter 1.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of the plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Secs. 3, 34, Ch. 582, L. 1999.

7-15-4214. Hearing on urban renewal plan required. (1) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof.

(2) Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) must be given by publication as provided in 7-1-4127 and by mailing a notice of the hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contracts for deed of the property, at the address shown on the tax roll.

(2) The notice must describe the time, date, place, and purpose of the hearing, generally identify the urban renewal area affected, and outline the general scope of the urban renewal plan under consideration.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 8, Ch. 526, L. 1983; amd. Sec. 54, Ch. 354, L. 2001.

7-15-4216. Requirements for approval of urban renewal plans and projects. (1) The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared.

(2) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has by resolution determined such area to be a blighted area and designated such area as appropriate for an urban renewal project.

(3) An urban renewal plan adopted after July 1, 1979, must be approved by ordinance.

(4) All urban renewal plans approved by resolution prior to May 8, 1979, are hereby validated.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 667, L. 1979.

7-15-4217. Criteria for approval of urban renewal project. Following the hearing required by 7-15-4214, the local governing body may, by ordinance, approve an urban renewal project if it finds that:

(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(4) a sound and adequate financial program exists for the financing of said project.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 2, Ch. 667, L. 1979.

7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in 7-15-4302(1) or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of part 44 of chapter 7 or of part 43 of chapter 13, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality, in accordance with the provisions governing municipal general obligation bonds under chapter 7, part 42, at the same election and shall be approved by a majority of those qualified electors voting on such question.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 46, Ch. 575, L. 1981.

7-15-4219. Effect of approval of urban renewal project. Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(f).

7-15-4220. Use of neighborhood development program to implement urban renewal activities. (1) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with 7-15-4218.

(2) In the event of such election, the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with 7-15-4211 through 7-15-4221. Such activity year shall relate to the budget year of the municipality.

(3) Such activities need not be limited to contiguous areas. However, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this part. The yearly activities shall constitute a part of the urban renewal plan, and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously.

(4) Every municipality shall have all the power necessary or convenient to plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this part and part 43 for carrying out and planning urban renewal projects.

History: (1), (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; (2)En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; Sec. 11-3901, R.C.M. 1947; (4)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; R.C.M. 1947, 11-3901(part), 11-3906(h), 11-3907(j).

7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee's or purchaser's successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.

(4) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(e); amd. Sec. 3, Ch. 667, L. 1979; amd. Sec. 614, Ch. 61, L. 2007.

7-15-4222 through 7-15-4230 reserved.

7-15-4231. Exercise of powers related to urban renewal. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by 7-15-4232 or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

History: En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(a).

7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency. When a municipality has made the finding prescribed in 7-15-4210 and has elected to have the urban renewal project powers exercised as specified in 7-15-4233:

(1) such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate; or

(2) the legislative body of a city may create an urban renewal agency in such municipality, to be known as a public body corporate, to which such powers may be assigned.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(a).**

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department. (1) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(a) to formulate and coordinate a workable program as specified in 7-15-4209;

(b) to prepare urban renewal plans;

(c) to prepare recommended modifications to an urban renewal project plan;

(d) to undertake and carry out urban renewal projects as required by the local governing body;

(e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;

(f) to disseminate blight clearance and urban renewal information;

(g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;

(h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;

(i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;

(j) to insure real or personal property as provided in 7-15-4258;

(k) to effectuate the plans provided for in 7-15-4254;

(l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;

(m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;

(o) to negotiate for the acquisition of land;

(p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;

(q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: **En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(b).**

7-15-4234. Urban renewal agency to be administered by appointed board of commissioners. (1) If the urban renewal agency is authorized to transact business and exercise powers under this part, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency consisting of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each subsequent appointment must be for 4 years. A certificate of the appointment or reappointment of a commissioner must be filed with the clerk of

the municipality, and the certificate is conclusive evidence of the proper appointment of the commissioner.

(3) Each commissioner shall hold office until a successor has been appointed and has qualified.

(4) A commissioner may not receive compensation for services but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 615, Ch. 61, L. 2007.

7-15-4235. Restrictions on agency commissioners holding other public office. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this part or part 43 shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or office.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4236. Conduct of business. The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).

7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under this part and part 43 shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of the fiscal year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 1, Ch. 441, L. 1991.

7-15-4238. Employment of necessary staff. The urban renewal agency or department or officers exercising urban renewal project powers shall be supplied with the necessary technical experts and such other agents and employees, permanent and temporary, as are required.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 17, Ch. 253, L. 1979.

7-15-4239. Control of conflict of interest. (1) (a) A public official, employee of a municipality or urban renewal agency, or department or officers that have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 may not voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of the municipality, or in any contract or proposed contract in connection with an urban renewal project.

(b) When an acquisition is not voluntary, the interest acquired must be immediately disclosed in writing to the local governing body, and the disclosure must be entered upon the minutes of the governing body.

(2) If an official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property that the person knows is included in an urban renewal project, the person shall immediately disclose this fact in writing to the local governing body, and the disclosure must be entered upon the minutes of the governing body. An official or a department or division head may not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers that have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part); amd. Sec. 616, Ch. 61, L. 2007.

7-15-4240. Misconduct in office. Any violation of the provisions of 7-15-4235 or 7-15-4239 shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4241 through 7-15-4250 reserved.

7-15-4251. General powers of municipalities in connection with urban renewal. Every municipality shall have all the power necessary or convenient:

(1) to carry out and effectuate the purposes and provisions of this part and part 43;

(2) to undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part and part 43, and to disseminate blight clearance and urban renewal information;

(3) to organize, coordinate, and direct, within the municipality, the administration of the provisions of this part and part 43 as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively;

(4) to exercise all or any part or combination of powers granted in this part or part 43.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4252. Prevention and elimination of urban blight. The municipality is authorized to develop, test, and report methods and techniques and carry out demonstrations and other activities for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4253. Relocation of displaced families. Every municipality shall have power to prepare plans for the relocation of families displaced from an urban renewal area and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(g).

7-15-4254. Municipal power in the preparation of various plans. (1) Every municipality shall have power, within the municipality:

(a) to make or have made all plans necessary to the carrying out of the purposes of this part and to contract with any person, public or private, in making and carrying out such plans; and

(b) to adopt or approve, modify, and amend such plans.

(2) Such plans may include, without limitation:

(a) a comprehensive plan or parts thereof for the locality as a whole;

(b) urban renewal plans;

(c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4255. Authority to provide or contract for services related to urban renewal. (1) Every municipality shall have power to:

(a) provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, or roads in connection with an urban renewal project;

(b) install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements.

(2) Every municipality shall have power to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with

labor standards in the undertaking or carrying out of an urban renewal project and to include in any contract let in connection with such a project provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(b).

7-15-4256. Restriction on operation of certain utility services by municipality. Nothing in this part or part 43 shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines, or other public utility facilities, excepting waterlines and sewerlines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(l).

7-15-4257. Authority to enter private property. (1) Every municipality shall have power, within the municipality, to enter upon any building or property in any urban renewal area in order to make surveys and appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

(2) Such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4258. Acquisition and administration of real and personal property. (1) A municipality may:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise any real property and personal property that may be necessary for the administration of the provisions contained in part 43 and this part, together with any improvements on the real property;

(b) hold, improve, clear, or prepare for redevelopment property acquired pursuant to subsection (1)(a);

(c) dispose of real or personal property;

(d) insure or provide for the insurance of real or personal property or the operations of the municipality against any risks or hazards, including the power to pay premiums on any insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) Except as provided in 7-15-4204(2), 7-15-4206, and 7-15-4259, statutory provisions with respect to the acquisition, clearance, or disposition of property by public bodies may not restrict a municipality in the exercise of functions with respect to an urban renewal project.

(4) A municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.

History: (1), (2)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3907(part); amd. Sec. 2, Ch. 441, L. 1991; amd. Sec. 21, Ch. 125, L. 2001; amd. Sec. 3, Ch. 441, L. 2007.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described in the resolution is necessary for an urban renewal project under this part, a municipality may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property that it considers necessary for urban renewal.

(2) Condemnation for urban renewal of blighted areas, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), is a public use, and property already devoted to any other public use or acquired by the owner or the owner's predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for an urban renewal project may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. An allowance may not be made for the improvements begun on real property after notice to the owner of the property of the institution of proceedings to condemn the property. Evidence is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use of the premises.

(4) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity.

History: **En. Sec. 8, Ch. 195, L. 1959; R.C.M. 1947, 11-3908; amd. Sec. 22, Ch. 125, L. 2001; amd. Sec. 4, Ch. 441, L. 2007; amd. Sec. 1, Ch. 512, L. 2007.**

Cross-References

Eminent domain, Title 70, ch. 30.

7-15-4260. Exemption from levy and sale for certain property. All property of a municipality, including funds, owned or held by it for the purposes of this part and part 43 shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part or part 43 by a municipality on an urban renewal project or the rents, fees, grants, or revenues derived from these projects.

History: **En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(a); amd. Sec. 4, Ch. 667, L. 1979.**

7-15-4261. Exemption from taxation for certain property. (1) The property of a municipality acquired or held for the purposes of this part is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof.

(2) Such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: **En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(b).**

7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest in real property acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect to the real property; or

(b) retain the property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to any covenants, conditions, and restrictions, including covenants running with the land, that it considers necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) The sale, lease, other transfer, or retention and any agreement relating the real property may be made only after the approval of the urban renewal plan by the local governing body.

(3) Except as provided in subsection (5), the real property or interest must be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the:

(a) uses provided in the plan;

(b) restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and

(c) objectives of the plan for the prevention of the recurrence of blighted areas.

(4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred must be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

(5) A transfer under this section may include a donation of the land or a sale of the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part); amd. Sec. 8, Ch. 170, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 170 in (3) at beginning inserted exception clause; inserted (5) providing that transfer may include donation or sale of certain property to a corporation for construction of multifamily or single-family housing for low-income housing or other improvements that enable corporation to pursue corporate purposes; inserted (6) providing that land transferred pursuant to subsection (5) must be used for low-income housing and may be subject to reversionary clause; and made minor changes in style. Amendment effective July 1, 2009.

7-15-4263. Procedure to dispose of property to private persons. (1) A municipality may dispose of real property in an urban renewal area to private persons only under reasonable procedures as it shall prescribe or as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part of an urban renewal area.

(b) The notice must be published as provided in 7-1-4127 prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance under the provisions of 7-15-4262 through 7-15-4266.

(c) The notice must identify the area or portion of the area and must state that any further information that is available may be obtained at the office designated in the notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making the proposals to carry them out. The municipality may accept those proposals as it considers to be in the public interest and in furtherance of the purposes of this part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of 7-15-4262 and 7-15-4264, and deliver contracts, deeds, leases, and other instruments of transfer.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(b); amd. Sec. 55, Ch. 354, L. 2001.

7-15-4264. Obligations of transferees of municipal property in urban renewal area. (1) The purchasers or lessees and their successors and assigns are obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with other requirements that the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on real property required by the urban renewal plan.

(2) In any instrument of conveyance to a private purchaser or lessee, the municipality may provide that the purchaser or lessee may not sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until the purchaser or lessee has completed the construction of any and all improvements that the purchaser or lessee is obligated to construct.

(3) The inclusion in a contract or conveyance to a purchaser or lessee of any covenants, restrictions, or conditions, including the incorporation by reference of the provisions of an urban renewal plan or any part of a plan, may not prevent the recording of the contract or conveyance in the land records of the clerk and recorder of the county in which the city or town is located, in a manner that provides actual or constructive notice of the covenants, restrictions, or conditions.

History: **En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part); amd. Sec. 617, Ch. 61, L. 2007.**

7-15-4265. Presumption of regularity in transfer of title. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this part or part 43 shall be conclusively presumed to have been executed in compliance with the provisions of this part and part 43 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: **En. Sec. 14, Ch. 195, L. 1959; R.C.M. 1947, 11-3914.**

7-15-4266. Temporary use of municipal property in urban renewal area. A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of 7-15-4262 and 7-15-4264, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. The municipality may, after a public hearing, extend the time for a period not to exceed 3 years.

History: **En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(c).**

7-15-4267. Cooperation by public bodies. (1) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this part or part 43, upon such terms, with or without consideration, as it may determine, may:

(a) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

(b) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(c) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;

(d) lend, grant, or contribute funds to a municipality;

(e) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this part or part 43, including the furnishing of funds or other assistance in connection with an urban renewal project;

(f) cause to be furnished public buildings and public facilities, including parks; playgrounds; recreational, community, educational, water, sewer, or drainage facilities; or any other works which it is otherwise empowered to undertake;

(g) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places;

(h) plan or replan or zone or rezone any part of the urban renewal area; and

(i) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of 7-15-4263.

History: **En. Sec. 13, Ch. 195, L. 1959; R.C.M. 1947, 11-3913(a), (b).**

7-15-4268 through 7-14-4280 reserved.

7-15-4281. Financial authority in connection with urban renewal. (1) A municipality shall have power to:

(a) borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance for the purposes of this part and enter into and carry out contracts in connection with the financial assistance from:

(i) the federal government;

(ii) the state, a county, or any other public body; or

(iii) any sources, public or private;

(b) (i) appropriate funds and make expenditures as may be necessary to carry out the purposes of this part; and

(ii) subject to 15-10-420 and in accordance with state law, levy taxes and assessments for the purposes of this part;

(c) invest any urban renewal project funds held in reserves or sinking funds or any funds that are not required for immediate disbursement in property or securities in which mutual savings banks may legally invest funds subject to their control;

(d) adopt, in accordance with state law, annual budgets for the operation of an urban renewal agency, department, or office vested with urban renewal project powers under 7-15-4231;

(e) enter, in accordance with state law, into agreements, which may extend over any period, with agencies or departments vested with urban renewal project powers under 7-15-4231 respecting action to be taken by the municipality pursuant to any of the powers granted by part 43 or this part;

(f) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places and plan or replan, zone or rezone any part of the municipality in accordance with state law.

(2) A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project the conditions imposed pursuant to federal laws that the municipality may consider reasonable and appropriate and that are not inconsistent with the purposes of part 43 and this part.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part); amd. Sec. 46, Ch. 584, L. 1999.

7-15-4282. Authorization for tax increment financing. Any urban renewal plan as defined in 7-15-4206, industrial district ordinance adopted pursuant to 7-15-4299, technology district ordinance adopted pursuant to 7-15-4295, or aerospace transportation and technology district ordinance adopted pursuant to 7-15-4296 may contain a provision or be amended to contain a provision for the segregation and application of tax increments as provided in 7-15-4282 through 7-15-4299.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 4, Ch. 712, L. 1989; amd. Sec. 2, Ch. 566, L. 2005; amd. Sec. 1, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 near middle after "7-15-4295" inserted "or aerospace transportation and technology district ordinance adopted pursuant to 7-15-4296" and at end after "through" substituted "7-15-4299" for "7-15-4292"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the last equalized assessment roll.

(2) "Aerospace transportation and technology district" means a tax increment financing aerospace transportation and technology district created pursuant to 7-15-4296.

(3) "Aerospace transportation and technology infrastructure development project" means a project undertaken within or for an aerospace transportation and technology district that consists of any of the activities authorized by 7-15-4288.

(4) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area, industrial district, technology district, or aerospace transportation and technology district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(5) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, industrial district, technology district, or aerospace transportation and technology district subject to taxation.

(6) "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4297 through 7-15-4299.

(7) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any of the activities authorized by 7-15-4288.

(8) "Municipality" means any incorporated city or town, county, or city-county consolidated local government for the purposes of:

(a) an industrial district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43;

(b) a technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43; or

(c) an aerospace transportation and technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43.

(9) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area, industrial district, technology district, aerospace transportation and technology district, or a part of an area or district is located against the incremental taxable value.

(10) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4299.

(11) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(12) "Taxing body" means any incorporated city or town, county, city-county consolidated local government, school district, or other political subdivision or governmental unit of the state, including the state, that levies taxes against property within the urban renewal area, industrial district, technology district, or an aerospace transportation and technology district.

(13) "Technology district" means a tax increment financing district created pursuant to 7-15-4295.

(14) "Technology infrastructure development project" means a project undertaken within or for a technology district that consists of any of the activities authorized by 7-15-4288.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(2); amd. Sec. 5, Ch. 667, L. 1979; amd. Sec. 5, Ch. 712, L. 1989; amd. Sec. 1, Ch. 269, L. 1999; amd. Sec. 15, Ch. 114, L. 2003; amd. Sec. 3, Ch. 566, L. 2005; amd. Sec. 2, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in introductory clause after "through" deleted "7-15-4292 and 7-15-4297 through"; in definition of industrial district before "7-15-4299" inserted "7-15-4297 through"; in definition of municipality at beginning before "means" deleted "for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter", inserted "for the purposes of", inserted (a) through (c) including an industrial district, a technology district, and an aerospace transportation and technology district; in definition of tax increment provision at end after "through" substituted "7-15-4299" for "7-15-4292"; in definition of taxing body near beginning after "means any" inserted "incorporated" and after "county" inserted "city-county consolidated local government"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4284. Filing of tax increment provisions plan or district ordinance. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan, industrial district ordinance, technology district ordinance, or aerospace transportation and technology district ordinance or an amendment to any of them containing a tax increment provision with the department of revenue.

(2) A certified copy of each plan, ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 712, L. 1989; amd. Sec. 4, Ch. 566, L. 2005; amd. Sec. 3, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (1) near middle after "technology district ordinance" inserted "or aerospace transportation and technology district ordinance"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4285. Determination and report of original, actual, and incremental taxable values. The department of revenue shall, upon receipt of a qualified tax increment provision and each succeeding year, calculate and report to the municipality and to any other affected taxing body in accordance with Title 15, chapter 10, part 2, the base, actual, and incremental taxable values of the property.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 667, L. 1979; amd. Sec. 7, Ch. 712, L. 1989; amd. Sec. 5, Ch. 566, L. 2005; amd. Sec. 1, Ch. 483, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 483 near beginning substituted "upon receipt of a qualified tax increment" for "immediately upon receipt of the tax increment"; and near end inserted "in accordance with Title 15, chapter 10, part 2". Amendment effective May 10, 2009.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area, industrial district, technology district, or aerospace transportation and technology district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district, except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4299.

(b) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(4); amd. Sec. 7, Ch. 667, L. 1979; amd. Sec. 8, Ch. 712, L. 1989; amd. Sec. 4, Ch. 441, L. 1991; amd. Sec. 2, Ch. 422, L. 1997; amd. Sec. 6, Ch. 566, L. 2005; amd. Sec. 4, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (1) near end of first sentence after "technology district" inserted "or aerospace transportation and technology district"; in (2)(a) at end after "through" substituted "7-15-4299" for "7-15-4292"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4287. Provision for use of portion of tax increment. (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that a portion of the tax increment from the incremental taxable value shall be released from segregation by an adjustment of the base taxable value, provided that:

(a) all principal and interest then due on bonds for which the tax increment has been pledged has been fully paid; and

(b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The adjusted base value determined under subsection (1) shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body must reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(6); amd. Sec. 8, Ch. 667, L. 1979.

7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, technology infrastructure, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions of areas;

(7) administrative costs associated with the management of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the needs of an urban renewal project in an urban renewal area, the infrastructure needs of secondary, value-adding industries in the industrial district, the needs of a technology infrastructure development project in the technology district, or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;

(10) the connection of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district to existing infrastructure outside the district;

(11) the provision of direct assistance, through industrial infrastructure development projects, technology infrastructure development projects, or aerospace transportation and technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the district; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 1, Ch. 147, L. 1981; amd. Sec. 9, Ch. 712, L. 1989; amd. Sec. 1, Ch. 737, L. 1991; amd. Sec. 1, Ch. 500, L. 1993; amd. Sec. 2, Ch. 269, L. 1999; amd. Sec. 16, Ch. 114, L. 2003; amd. Sec. 7, Ch. 566, L. 2005; amd. Sec. 5, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (9) near beginning after "determine" inserted "the needs of an urban renewal project in an urban renewal area"; in (11) near middle after "technology" inserted "infrastructure"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4289. Use of tax increments for bond payments. The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for the purpose of providing funds to pay such costs.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 9, Ch. 667, L. 1979.

7-15-4290. Use of property taxes and other revenue for payment of bonds. (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289.

(c) The tax increment derived from a technology district may be pledged for the payment of revenue bonds issued for technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay technology district costs described in 7-15-4288 and 7-15-4289.

(d) The tax increment derived from an aerospace transportation and technology district may be pledged for the payment of revenue bonds issued for aerospace transportation and technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay aerospace transportation and technology district costs described in 7-15-4288 and 7-15-4289.

(2) A municipality issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenue of the municipality, except property taxes prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.

(3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the municipality by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

(4) If applicable, the municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 10, Ch. 667, L. 1979; amd. Sec. 1, Ch. 615, L. 1987; amd. Sec. 10, Ch. 712, L. 1989; amd. Sec. 8, Ch. 566, L. 2005; amd. Sec. 6, Ch. 394, L. 2009; amd. Sec. 8, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 394 inserted (1)(d) regarding the pledge of a tax increment derived from an aerospace transportation and technology district. Amendment effective April 28, 2009.

Chapter 489 inserted (4) concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds. Amendment effective May 14, 2009.

7-15-4291. Agreements to remit unused portion of tax increments. The municipality may also enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).

7-15-4292. Termination of tax increment financing — exception. (1) The tax increment provision terminates upon the later of:

(a) the 15th year following its adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds.

(2) (a) Except as provided in subsection (2)(b), any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the area or district.

(b) Upon termination of the tax increment provision, a municipality may retain and use in accordance with the provisions of the urban renewal plan:

(i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision;

(ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment; or

(iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area, the industrial district, the technology district, or the aerospace transportation and technology district and must be paid to each of the taxing bodies as provided by law.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions. However, if bonds secured by a tax increment

provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(7); amd. Sec. 1, Ch. 251, L. 1985; amd. Sec. 11, Ch. 712, L. 1989; amd. Sec. 3, Ch. 441, L. 1991; amd. Sec. 3, Ch. 422, L. 1997; amd. Sec. 1, Ch. 545, L. 2005; amd. Sec. 9, Ch. 566, L. 2005; amd. Sec. 7, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (2)(a) at end before "district" inserted "area or"; in (3) near middle after "technology district" inserted "or the aerospace transportation and technology district" and at end after "bodies" inserted "as provided by law"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4293. Adjustment of base taxable value following change of law or local disaster. (1) If the base taxable value of an urban renewal area, an industrial district, a technology district, or an aerospace transportation and technology district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a municipality may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the area or district tax-exempt status within the first year of creation of the tax increment financing district. The municipality shall give notice of and hold a public hearing on the proposed change.

(3) (a) If an urban renewal area, an industrial district, a technology district, or an aerospace transportation and technology district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.

(b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred.

History: En. Sec. 12, Ch. 667, L. 1979; amd. Sec. 2, Ch. 147, L. 1981; amd. Sec. 12, Ch. 712, L. 1989; amd. Sec. 56, Ch. 574, L. 2001; amd. Sec. 1, Ch. 525, L. 2003; amd. Sec. 2, Ch. 545, L. 2005; amd. Sec. 10, Ch. 566, L. 2005; amd. Secs. 1, 2, Ch. 350, L. 2009; amd. Sec. 8, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section — Coordination: Chapter 350 inserted (3) concerning base taxable value of area or district that suffers loss of property value directly related to locally declared disaster. Amendment effective April 24, 2009.

The amendments made to this section by sec. 1, Ch. 350, L. 2009, were replaced by sec. 2, Ch. 350, L. 2009, a coordination section.

Chapter 394 in (1) near beginning after "technology district" inserted "or an aerospace transportation and technology district"; in (2) near end of first sentence before "district" inserted "area or"; and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 4, Ch. 350, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

7-15-4294. Assessment agreements. (1) A municipality may enter into a written agreement with any private person:

(a) establishing a minimum market value of land, existing improvements, or improvements or equipment to be constructed or acquired; and

(b) requiring the individual to pay an annual tax deficiency fee whenever the property that is the subject of the agreement is valued by the department of revenue for property tax purposes at a market value that is less than the value established by the agreement. The amount of the deficiency fee may not exceed the difference between the property taxes that would have been imposed on the property based on the minimum value of the property expressed in the agreement and the property taxes that are imposed on the property based on the market value established by the department of revenue.

(2) The property that is the subject of the agreement must be located or installed in an urban renewal area, an industrial district, a technology district, an aerospace transportation and technology district, or any other area or district that is subject to a tax increment financing provision.

(3) The minimum value established by the agreement may be fixed or may increase or decrease in later years from the initial minimum value as provided in the agreement.

(4) The agreement creates a lien on the property pursuant to 71-3-1506 and must be filed and recorded in the office of the county clerk and recorder in each county in which the property or any part of the property is located. Recording an agreement constitutes notice of the agreement to anyone who acquires any interest in the property that is the subject of the agreement, and the agreement is binding upon the person acquiring the interest.

(5) An agreement made pursuant to subsection (1) may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an agreement must be approved by the governing body of the municipality. A document modifying or terminating an agreement must be filed in the office of the county clerk and recorder in each county in which the property or any part of the property is located.

(6) An agreement entered into pursuant to subsection (1) or modified pursuant to subsection (5) terminates on the earliest of:

(a) the date on which conditions in the agreement for termination are satisfied;

(b) the termination date specified in the agreement; or

(c) the date when the tax increment is no longer paid to the municipality under 7-15-4292.

(7) This section does not limit a municipality's authority to enter into contracts other than tax deficiency agreements as described in this section.

History: En. Sec. 4, Ch. 545, L. 2005; amd. Sec. 9, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (2) near beginning after "industrial district" inserted "a technology district"; and made minor changes in style. Amendment effective April 28, 2009.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

7-15-4295. Technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of a technology district for technology infrastructure development projects. The purpose of a technology district is the development of infrastructure to encourage the location and retention of technology infrastructure development projects in the state. The tenants of a technology district must be businesses or organizations engaged in technology-based operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the business or organization occur outside of Montana or the business or organization is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

(2) A technology district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned for use in accordance with the area growth policy, as defined in 76-1-103;

(c) may not comprise any property included within an existing urban renewal area, industrial district, or aerospace transportation and technology district created pursuant to this part;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements necessary for technology development;

(e) must, prior to its creation, have in place a formally adopted comprehensive development plan that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) A technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294.

History: En. Sec. 1, Ch. 566, L. 2005; amd. Sec. 10, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (1) near middle of second sentence after "technology" inserted "infrastructure"; in (2)(c) near end after "renewal area" substituted "industrial district, or aerospace transportation and technology district" for "district or industrial infrastructure development district"; in (3) at end after "through" substituted "7-15-4294" for "7-15-4293"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4296. Aerospace transportation and technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an aerospace transportation and technology district for aerospace transportation and technology infrastructure development projects if the proposed aerospace transportation and technology district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for use in accordance with the area growth policy document;

(c) does not include any property included within an existing urban renewal area, industrial district, or technology district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the location and retention of aerospace transportation and technology infrastructure development projects in the state.

(2) An aerospace transportation and technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294.

History: En. Sec. 4, Ch. 269, L. 1999; amd. Sec. 5, Ch. 44, L. 2007; amd. Sec. 11, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (1)(c) near end after "renewal area" substituted "industrial district, or technology district" for "district or industrial infrastructure development district"; in (2) at end after "through" substituted "7-15-4294" for "7-15-4293"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4297. Short title. Sections 7-15-4297 through 7-15-4299 may be cited as the "Tax Increment Financing Industrial Development Act".

History: En. Sec. 1, Ch. 712, L. 1989.

7-15-4298. Legislative findings. The legislature finds and declares that:

(1) infrastructure-deficient areas exist in the municipalities of the state and constitute a serious impediment to the development of infrastructure-intensive, secondary, value-adding economic development in Montana;

(2) municipalities lack sufficient capital to rectify the infrastructure shortage in infrastructure-deficient areas, thus impeding the ability of municipalities to achieve economic growth through the development of secondary, value-adding industries;

(3) the creation of industrial infrastructure is a matter of state policy and state concern because the state and its municipalities will continue to suffer economic dislocation due to the lack of secondary, value-adding industries; and

(4) the state's tax increment financing laws should be used to encourage the creation of areas in which needed industrial infrastructure for secondary, value-adding industries could be developed.

History: En. Sec. 2, Ch. 712, L. 1989.

7-15-4299. Industrial districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for light or heavy industrial use in accordance with the area growth policy document;

(c) does not include any property included within an existing urban renewal area, technology district, or aerospace transportation and technology district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294.

History: En. Sec. 3, Ch. 712, L. 1989; amd. Sec. 6, Ch. 44, L. 2007; amd. Sec. 12, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 in (1)(c) near end after "renewal area" inserted "technology district, or aerospace transportation and technology"; in (2) at end after "through" substituted "7-15-4294" for "7-15-4293"; and made minor changes in style. Amendment effective April 28, 2009.

Part 43
Urban Renewal
Continued

7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, technology infrastructure development bonds, aerospace transportation and technology infrastructure development bonds, and refunding bonds. (1) A municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project under Title 7, chapter 15, part 42, and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) Except as provided in 7-15-4302, bonds may not pledge the general credit of the municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects, industrial infrastructure development projects, technology infrastructure development project, or aerospace transportation and technology infrastructure development projects under Title 7, chapter 15, part 42, and this part, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4299, and, if the income, proceeds, revenue, and funds of the municipality are insufficient for the payment, from other revenue of the municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects, industrial infrastructure development projects, technology infrastructure development project, or aerospace transportation and technology infrastructure development projects of the municipality under Title 7, chapter 15, part 42, and this part or by a mortgage on all or part of any projects.

(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body.

(4) If applicable, the governing body of the municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 11, Ch. 667, L. 1979; amd. Sec. 2, Ch. 615, L. 1987; amd. Sec. 13, Ch. 712, L. 1989; amd. Sec. 3, Ch. 269, L. 1999; amd. Sec. 11, Ch. 566, L. 2005; amd. Sec. 13, Ch. 394, L. 2009; amd. Sec. 9, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 394 in (2) at beginning of first sentence inserted exception clause and near middle after "through" substituted "7-15-4299" for "7-15-4292"; and made minor changes in style. Amendment effective April 28, 2009.

Chapter 489 inserted (4) concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds. Amendment effective May 14, 2009.

7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure project of a municipality, the municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by the municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for a project may be used to finance the exercise of the powers conferred upon the municipality by Title 7, chapter 15, part 42, and this part that are necessary or proper to complete the project in accordance with the approved plan, industrial district ordinance, technology district ordinance, or aerospace transportation and technology district ordinance and any modification to the ordinance that is duly adopted by the local governing body.

(4) If applicable, the municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: (1), (2)En. Sec. 13, Ch. 195, L. 1959; Sec. 11-3913, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3913(c); amd. Sec. 18, Ch. 253, L. 1979; amd. Sec. 14, Ch. 712, L. 1989; amd. Sec. 14, Ch. 394, L. 2009; amd. Sec. 10, Ch. 489, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 394 in (1) near middle and in (3) near beginning after "infrastructure development project" inserted "technology infrastructure development project, or aerospace transportation and technology infrastructure project"; in (3) near end after "district ordinance" inserted "technology district ordinance, or aerospace transportation and technology district ordinance"; and made minor changes in style. Amendment effective April 28, 2009.

Chapter 489 inserted (4) concerning tax credit bonds, recovery zone economic development bonds, or qualified energy conservation bonds; and made minor changes in style. Amendment effective May 14, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

7-15-4303. Bonds to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this part and part 42 shall be fully negotiable.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4304. Presumption of regularity of bond issuance. In a suit, action, or proceeding involving the validity or enforceability of or security for any bond issued under Title 7, chapter 15, part 42, and this part, a bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project is conclusively considered to have been issued for that purpose and the project is conclusively considered to have been planned, located, and carried out in accordance with the provisions of Title 7, chapter 15, part 42, and this part.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(f); amd. Sec. 15, Ch. 712, L. 1989; amd. Sec. 12, Ch. 566, L. 2005; amd. Sec. 15, Ch. 394, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 394 near middle after "infrastructure development project" inserted "or aerospace transportation and technology infrastructure development project"; and made minor changes in style. Amendment effective April 28, 2009.

7-15-4305. Validity and sufficiency of signatures on bonds. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this part and part 42 shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if such officials had remained in office until such delivery.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4306. Bonds as legal investments. (1) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this part and part 42, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, money in an amount which (together with any other money irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which money under the terms of said agreement is required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity.

(2) Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959; R.C.M. 1947, 11-3911.

7-15-4307. Tax exemption for bonds. Bonds issued under the provisions of this part and part 42 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4308 through 7-15-4320 reserved.

7-15-4321. Nature of urban renewal bonds. Bonds issued under 7-15-4301 shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this part and part 42.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4322. Details relating to urban renewal bonds. (1) Bonds issued under 7-15-4301 may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest as provided in 17-5-102, be in denomination or denominations, be in form (either coupon or registered), carry conversion or registration privileges, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the resolution, ordinance, or trust indenture or a mortgage authorized pursuant to the resolution, ordinance, or trust indenture.

(2) (a) The bonds may be sold at not less than 97% of par, at public or private sale, or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold, at public or private sale, at not less than 97% of par at an interest cost to the municipality of not to exceed the interest cost of the portion of the bonds sold to the federal government.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 19, Ch. 253, L. 1979; amd. Sec. 7, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 25, Ch. 370, L. 1987; amd. Sec. 39, Ch. 423, L. 1995.**

7-15-4323. Redemption of urban renewal bonds. Every municipality shall have power to redeem such bonds as have been issued pursuant to 7-15-4301 at the redemption price established therein or to purchase such bonds at less than redemption price. All such bonds so redeemed or purchased shall be canceled.

History: **En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).**

7-15-4324. Special bond provisions when tax increment financing is involved. (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4299 must be designed to mature not later than 25 years from their date of issue and must mature in years and amounts so that the principal and interest due on the bonds in each year may not exceed the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district, and other estimated revenue, including proceeds of the bonds available for payment of interest on the bonds, pledged to their payment to be received in that year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in an area or district, and other revenue, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment of the bonds and to fund any reserve fund in respect of the bonds.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(g); amd. Sec. 47, Ch. 584, L. 1999; amd. Sec. 16, Ch. 394, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 394 in (1) near beginning after "through" substituted "7-15-4299" for "7-15-4292"; in (2) near middle of first sentence before "district" inserted "area or"; and made minor changes in style. Amendment effective April 28, 2009.

Part 44
Municipal Housing Authorities

7-15-4401. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in urban areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such urban areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such urban areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).

7-15-4402. Definitions. As used in part 45 or this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Authority" or "housing authority" means a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions set forth in part 45 or this part.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to part 45 or this part.

(3) "City" means a city that is or is about to be included in the territorial boundaries of an authority.

(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" means real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority or the occupants of the dwelling accommodations.

(7) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing a city.

(9) "Elderly families" means families of which the head of the family or that person's spouse is at least 60 years of age and who otherwise qualify as persons of low income.

(10) "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; or

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term "housing project" may also be applied to:

(i) the planning of the buildings and improvements;

(ii) the acquisition of property;

(iii) the demolition of existing structures;

(iv) the construction, reconstruction, alteration, and repair of the improvements; and

(v) all other work in connection with subsections (12)(b)(i) through (12)(b)(iv).

(13) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale of the bonds.

(14) "Municipality" means a city, town, or incorporated village that is located within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" means a bondholder, a trustee for any bondholder, a lessor demising property to the authority used in connection with a housing project or any assignee or assignees of the lessor's interest or any part of the interest, and the United States when it is a party to any contract with the authority.

(16) "Persons of low income" means persons or families who lack the amount of income that is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) "Real property" means lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right in an estate, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) "State" means the state of Montana.

(19) "Trust indenture" means instruments pledging the revenue of real or personal properties but not conveying the properties or conferring a right to foreclose and cause a sale of the properties.

History: En. Sec. 3, Ch. 140, L. 1935; re-en. Sec. 5309.3, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1, Ch. 133, L. 1973; R.C.M. 1947, 35-103; amd. Sec. 20, Ch. 253, L. 1979; amd. Sec. 618, Ch. 61, L. 2007.

7-15-4403. Petition to create municipal housing authority — hearing and notice. (1) Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area.

(2) Upon the filing of such a petition, the city clerk shall give notice of the time, place, and purpose of a public hearing at which the council will determine the need for an authority in the city and said surrounding area.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4404. Notice of hearing on petition. The notice required by 7-15-4403 must be published at the city's expense as provided in 7-1-4127.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 56, Ch. 354, L. 2001.

7-15-4405. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-4403 and 7-15-4404, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4406. Decision of city council. (1) After the hearing, the council shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and the surrounding area; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the city and the surrounding area available for all the inhabitants thereof.

(2) If it determines that either or both of the above-enumerated conditions exist, the council shall draft an ordinance authorizing the mayor to appoint seven commissioners to act as an authority.

(3) If the council, after a hearing, determines that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months have expired from the date of the denial of a petition, subsequent petitions may be filed and new hearings and determinations made on the petitions.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 1, Ch. 514, L. 1989.

7-15-4407. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4408. Voter approval required to create housing authority. The ordinance authorized by 7-15-4406(2) is not effective until it has been approved by a majority vote of the registered electors within the city limits voting either at a special election held in conjunction with a regular or primary election or at a general election.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 344, Ch. 571, L. 1979; amd. Sec. 55, Ch. 387, L. 1995.

7-15-4409. Application for incorporation. (1) The commissioners shall present to the secretary of state an application signed by them that must set forth, without any detail other than the mere recital:

(a) that a notice has been given and a public hearing has been held as provided in 7-15-4405, that the council made the determination provided for in 7-15-4406 after the hearing, and that the mayor has appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing each commissioner's right to office, the date and place of induction into and taking oath of office, and that the commissioner's desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name that is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application must be subscribed and sworn to by each of the commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that the officer personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore to the application in the officer's presence.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 619, Ch. 61, L. 2007.

7-15-4410. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall receive and file it and shall record it in an appropriate book of record in the secretary of state's office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the certificate with the application.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 620, Ch. 61, L. 2007.

7-15-4411. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-4409 and 7-15-4410, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4412. Presumption of regularity in creation of municipal housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4413. Boundaries of municipal housing authority. (1) The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city.

(2) After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4414. Problems arising from existence of several overlapping authorities. (1) In case an area lies within 10 miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state.

(2) No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4415. Cooperation between housing authorities. Any two or more housing authorities may join or cooperate with one another in the exercise of any or all of the powers conferred on such housing authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such housing authorities.

History: **En. Sec. 10, Ch. 140, L. 1935; re-en. Sec. 5309.10, R.C.M. 1935; amd. Sec. 2, Ch. 153, L. 1941; R.C.M. 1947, 35-110.**

7-15-4416. Cooperation among governmental units and housing authorities. (1) An authority shall have power to arrange with the state, its subdivisions and agencies, and any county, city, or municipality of the state, to the extent that it is within the scope of each of their respective functions:

(a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing project;

(b) to provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(c) to change the city or municipality map or to plan, replan, zone, or rezone any part of the city or municipality.

(2) (a) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, the state, its subdivisions and agencies, and any county, city, or municipality of the state may, upon such terms, with or without consideration, as it may determine:

(i) grant, sell, convey, or lease any of its property to a housing authority or the United States of America or any agency thereof; and

(ii) to the extent that it is within the scope of each of their respective functions:

(A) cause the services customarily provided by each of them to be rendered for the benefit of the housing authority and/or the occupants of such housing projects;

(B) provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(C) enter into any agreement to open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities; to change the city or municipality map; or to plan, replan, zone, or rezone any part of the city or municipality.

(b) Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this subsection may be made by the state, its subdivisions and agencies, and any county, city, or municipality of the state without appraisal, public notice, advertisement, or public bidding.

(c) In connection with the exercise of the power granted by subsection (2), any city or municipality may incur the entire expense of any such public improvement located within its territorial boundaries without assessment against abutting property owners.

(d) As used in subsection (2):

(i) "municipality" shall mean any city, town, or incorporated village of the state;

(ii) "housing project" shall mean any undertaking to demolish, clear, remove, alter, or repair unsafe or unsanitary housing and/or to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health, or welfare purposes and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

History: (1)En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; Sec. 35-109, R.C.M. 1947; (2)(a) thru (2)(c)En. Sec. 3, Ch. 138, L. 1935; re-en. Sec. 5309.30, R.C.M. 1935; Sec. 35-137, R.C.M. 1947; (2)(d)En. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 35-136, R.C.M. 1947; R.C.M. 1947, 35-109(part), 35-136(3), (4), 35-137.

7-15-4417. Initial funding of housing authority. Immediately after the incorporation of a housing authority, the council or other governing body of a first- or second-class city included within the territorial boundaries of the authority:

(1) shall make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of the housing authority;

(2) shall appropriate such amount to the authority out of any money in the city treasury not appropriated to some other purpose; and

(3) shall cause the money so appropriated to be paid the authority as a donation.

History: Ap. p. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; Sec. 35-138, R.C.M. 1947; Ap. p. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 36-136, R.C.M. 1947; R.C.M. 1947, 35-136(2), 35-138(part); amd. Sec. 21, Ch. 253, L. 1979.

7-15-4418. Interim funding of housing authority. In addition to the power granted in 7-15-4417, any municipality located in whole or in part within the boundaries of a housing authority may, annually and from time to time, make donations or advances to the authority of such sums as the municipality in its discretion may determine.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 22, Ch. 253, L. 1979.

7-15-4419. Authority to reimburse municipality for loans. The authority, when it has money available therefor, shall reimburse a municipality for all advances made to it by way of loan.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 23, Ch. 253, L. 1979.

7-15-4420. Procedure to implement certain sections. (1) Except as otherwise provided in 7-15-4416(2) and 7-15-4417 through 7-15-4419, all action authorized to be taken under 7-15-4416(2) and 7-15-4417 through 7-15-4419 by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body.

(2) The resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted.

History: En. Sec. 5, Ch. 138, L. 1935; re-en. Sec. 5309.32, R.C.M. 1935; R.C.M. 1947, 35-139.

7-15-4421. Municipal housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-4422. Authorization to dissolve housing authority. If, after the lapse of 2 years from the creation of a housing authority by the filing and recording in the office of the secretary of state of the application as provided in 7-15-4410, no housing project has been commenced and no contract has been signed by the council or the mayor on behalf of the municipality with the housing authority or United States housing authority providing for contributions by the municipality either in cash or by tax remissions or exemptions in aid or support of any such housing project, such housing authority may be dissolved as provided in 7-15-4423.

History: **En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).**

7-15-4423. Resolution to dissolve housing authority. (1) When a housing authority is subject to dissolution as provided in 7-15-4422, the council may, at any regular meeting of the council, without any previous notice, and in its discretion, adopt a resolution declaring that:

(a) dwelling accommodations in the city and surrounding area are such that there is no need for the construction of any housing project;

(b) the need for the creation of a housing authority no longer exists; and

(c) the same be disbanded and dissolved.

(2) The resolution shall be spread upon the minutes of the meeting of the council. Thereupon, a copy of the said resolution shall be duly certified by the mayor and city clerk and filed for record in the office of the secretary of state, whereupon the housing authority shall be dissolved and all functions thereof cease and the commissioners thereof discharged from any further duties or powers.

History: **En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).**

7-15-4424 through 7-15-4430 reserved.

7-15-4431. Appointment of commissioners. (1) An authority consists of seven commissioners appointed by the mayor. The mayor shall designate the first presiding officer. A commissioner may not be a city official.

(2) Two of the commissioners must be directly assisted by the housing authority and are known as resident commissioners. The staff of the housing authority may not involve itself in the nomination or appointment of resident commissioners, except that the housing authority shall notify all of the households directly assisted by the housing authority when a resident commissioner position is vacant.

(3) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and the certificate is conclusive evidence of the proper appointment of the commissioner.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 2, Ch. 514, L. 1989; amd. Sec. 5, Ch. 472, L. 1997; amd. Sec. 1, Ch. 197, L. 2001.**

7-15-4432. Term of office. (1) Subject to subsection (2), the commissioners who are first appointed must be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. After the initial appointments, the term of office is 5 years.

(2) The resident commissioners who are first appointed shall serve for terms of 1 and 2 years, respectively, from the date of their appointment. After the initial appointments, the term of office is 2 years.

(3) A commissioner shall hold office until the commissioner's successor has been appointed and qualified.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 3, Ch. 514, L. 1989; amd. Sec. 2, Ch. 197, L. 2001.**

7-15-4433. Compensation of commissioners. A commissioner may not receive compensation for services, but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of authority duties.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 621, Ch. 61, L. 2007.**

7-15-4434. Vacancies. Vacancies shall be filled for the unexpired term.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).**

7-15-4435. Control of conflict of interest. (1) A commissioner or employee of an authority may not acquire any interest, direct or indirect, in a housing project or in any property included or planned to be included in a project. A commissioner may not have any interest, direct or indirect, in a contract or proposed contract for materials or services to be furnished or used in connection with a housing project.

(2) (a) If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in a housing project, the commissioner shall immediately disclose the interest in writing to the authority, and the disclosure must be entered upon the minutes of the authority.

(b) Failure to disclose an interest constitutes misconduct in office.

History: En. Sec. 7, Ch. 140, L. 1935; re-en. Sec. 5309.7, R.C.M. 1935; R.C.M. 1947, 35-107; amd. Sec. 4, Ch. 514, L. 1989; amd. Sec. 3, Ch. 197, L. 2001.

7-15-4436. Removal of commissioners. The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner has been given a copy of the charges, which may be made by the mayor, at least 10 days prior to the hearing on the charges and has had an opportunity to be heard in person or by counsel.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part); amd. Sec. 622, Ch. 61, L. 2007.

7-15-4437. Right of obligee of authority to request removal of commissioner. (1) An obligee of the authority may file with the mayor written charges that the authority is willfully violating any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of the charges at least 10 days prior to the hearing on the charges and shall provide an opportunity to be heard in person or by counsel. The mayor shall within 15 days after receipt of the charges remove a commissioner of the authority who is found to have acquiesced in any willful violation.

(2) A commissioner is considered to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if, before a hearing is held on the charges, the commissioner does not file a written statement with the authority of objections to or lack of participation in the violation.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part); amd. Sec. 623, Ch. 61, L. 2007.

7-15-4438. Record of removal proceedings. In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioners and the findings thereon.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).

7-15-4439. Conduct of business. (1) A simple majority of commissioners constitutes a quorum.

(2) When the office of the first presiding officer of the authority becomes vacant, the authority shall select a presiding officer from among its members. An authority shall select from among its members a vice presiding officer.

(3) An authority may:

(a) employ a secretary who is the executive director, technical experts, and other officers, agents, and employees, permanent and temporary, that it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for legal services that it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees powers or duties that it may consider proper.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 5, Ch. 514, L. 1989; amd. Sec. 624, Ch. 61, L. 2007.

7-15-4440. Certain laws controlling. (1) Insofar as the provisions of Chapter 140, Laws of 1935, are inconsistent with the provisions of any other law, the provisions of Chapter 140, Laws of 1935, shall be controlling.

(2) Insofar as the provisions of Chapter 193, Laws of 1957, are inconsistent with the provisions of any other law, the provisions of Chapter 193, Laws of 1957, shall be controlling.

History: (1)En. Sec. 28, Ch. 140, L. 1935; re-en. Sec. 5309.27, R.C.M. 1935; Sec. 35-127, R.C.M. 1947; (2)En. Sec. 9, Ch. 193, L. 1957; Sec. 35-125.2, R.C.M. 1947; R.C.M. 1947, 35-125.2, 35-127.

7-15-4441 through 7-15-4450 reserved.

7-15-4451. General powers of housing authority. (1) An authority shall exercise public powers and have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part and part 45, including the following powers in addition to others herein granted.

(2) An authority shall have power to:

(a) sue and be sued;

(b) have a seal and alter the same at pleasure;

(c) have perpetual succession;

(d) make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(e) make and from time to time amend and repeal bylaws and rules, not inconsistent with this part and part 45, to carry into effect the powers and purposes of the authority.

(3) In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this part and part 45.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4452. Exercise of powers. (1) An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

(2) Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4453. Strict compliance with laws and contracts required. The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this part and part 45 and the laws of the state and, in addition thereto, with each and every term, provision, and covenant in any contract of the authority to be kept or performed on its part.

History: **En. Sec. 6, Ch. 140, L. 1935; re-en. Sec. 5309.6, R.C.M. 1935; R.C.M. 1947, 35-106.**

7-15-4454. General powers related to housing programs. An authority shall have power to:

(1) determine where unsafe or unsanitary dwelling or housing conditions exist;

(2) study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning, and reconstruction of areas in which unsafe or unsanitary dwelling or housing conditions exist and the providing of dwelling accommodations for persons of low income and to cooperate with any city, municipal, or regional planning agency;

(3) prepare, carry out, and operate housing projects;

(4) provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(5) take over by purchase, lease, or otherwise any housing project located within its boundaries undertaken by any government;

(6) act as agent for the federal government in connection with the acquisition, construction, operation, and/or management of a housing project or any part thereof;

(7) arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening, or closing of streets, options, or property rights or for the furnishing of property or services in connection with a project;

(8) lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures, or facilities embraced in any housing project and to establish and revise the rents or charges therefor.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4455. Housing projects subject to planning, zoning, and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.

History: **En. Sec. 13, Ch. 140, L. 1935; re-en. Sec. 5309.13, R.C.M. 1935; R.C.M. 1947, 35-113.**

7-15-4456. Low-rent housing for the elderly. (1) For the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct, and operate new housing or acquire, remodel, and operate existing housing in order to provide accommodations designed specifically for such elderly families.

(2) Notwithstanding the provisions of this or any other law, an authority, in respect to dwelling units suitable to the needs of elderly families, may extend a prior preference in occupancy to such elderly families.

History: **En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).**

7-15-4457. Federal financial assistance for low-rent housing for the elderly. (1) Any application of the authority for federal financial assistance for such housing for elderly families shall first be approved by the council by resolution duly adopted.

(2) An authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

History: **En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).**

7-15-4458. Investigatory powers of housing authority. (1) An authority shall have power to:

(a) investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions;

(b) enter upon any building or property in order to conduct investigations or to make surveys or soundings;

(c) conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(d) issue subpoenas requiring the attendance of witnesses or the production of books and papers and issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance.

(2) Any of the investigations or examinations provided for in this part and part 45 may be conducted by the authority, by a committee appointed by it and consisting of one or more commissioners, by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or commissions.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4459. Availability of housing authority findings and determinations. An authority shall have power to make available to such agencies, boards, or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4460. Powers of housing authority relating to acquisition and disposition of property. (1) An authority may:

(a) purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest in property from any person, firm, corporation, city, municipality, or government;

(b) acquire by eminent domain, as provided in Title 70, chapter 30, any real property, including improvements and fixtures on the real property;

(c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest in property to any person, firm, corporation, municipality, city, or government;

(d) own, hold, clear, and improve property;

(e) insure or provide for the insurance of the property or operations of the authority against risks that the authority considers advisable;

(f) procure insurance or guarantees from the federal government of the payment of any debts or parts of debt secured by mortgages made or held by the authority on any property included in a housing project.

(2) Statutes with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to an authority unless the legislature specifically declares that the provisions are applicable.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part); amd. Sec. 23, Ch. 125, L. 2001.

7-15-4461. Acquisition of property by authority for government housing project. The authority may acquire, by purchase or by the exercise of its power of eminent domain as provided in 7-15-4462, any real or personal property for any housing project being constructed or operated by a government. The authority, upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

History: En. Sec. 12, Ch. 140, L. 1935; re-en. Sec. 5309.12, R.C.M. 1935; R.C.M. 1947, 35-112.

7-15-4462. Exercise of power of eminent domain. (1) After the adoption by the authority of a resolution declaring that the acquisition of the property described in the resolution is in the public interest and necessary for public use, the authority may acquire by eminent domain any real property, including fixtures and improvements, that it considers necessary to carry out the purposes of part 45 and this part.

(2) The authority shall exercise the power of eminent domain pursuant to the provisions of Title 70, chapter 30.

(3) Property already devoted to a public use may be acquired, provided that:

(a) property belonging to any city or municipality within the boundaries of the authority or belonging to any government may not be acquired without the government's consent; and

(b) property belonging to a public utility corporation may not be acquired without the approval of the commission or other officer or tribunal having regulatory power over the corporation if the utility is subject to regulatory power.

History: En. Sec. 11, Ch. 140, L. 1935; re-en. Sec. 5309.11, R.C.M. 1935; R.C.M. 1947, 35-111; amd. Sec. 24, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

7-15-4463. Title to property acquired from housing authority subject to agreements with governments. Notwithstanding anything in this part or part 45 to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority, whether pursuant to any foreclosure of a mortgage or pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon.

History: En. Sec. 22, Ch. 140, L. 1935; re-en. Sec. 5309.22, R.C.M. 1935; R.C.M. 1947, 35-122.

7-15-4464. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-4465. Payments by housing authorities to local and state bodies. Notwithstanding any limitations in this or any other law, any housing authority may agree to make such payments to the county, city, or municipality, the state or any political subdivision or agency thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this housing authorities law.

History: En. Sec. 35-125.1 by Sec. 7, Ch. 193, L. 1957; R.C.M. 1947, 35-125.1.

7-15-4466. Special powers and contract provisions when federal government involved. (1) In addition to the powers conferred upon the authority by other provisions of this part or part 45, the authority is empowered to:

(a) borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this part or part 45 to undertake;

(b) take over any land acquired by the federal government for the construction of a housing project;

(c) take over or lease or manage any housing project constructed or owned by the federal government; and

(d) these ends, enter into such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require, including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of such housing project.

(2) (a) In any contract with the federal government for annual contributions to an authority, the authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject. This obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws.

(b) Such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of such contract, provided that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted.

(3) A housing authority shall have the power (notwithstanding anything to the contrary contained in this part or part 45 or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards in the development or administration of projects and to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor and comply with any conditions which the federal government may have attached to the financial aid of the project.

History: (1), (2)En. Sec. 23, Ch. 140, L. 1935; re-en. Sec. 5309.23, R.C.M. 1935; amd. Sec. 5, Ch. 193, L. 1957; Sec. 35-123, R.C.M. 1947; (3)En. Sec. 25, Ch. 140, L. 1935; re-en. Sec. 5309.25, R.C.M. 1935; amd. Sec. 4, Ch. 153, L. 1941; amd. Sec. 6, Ch. 193, L. 1957; Sec. 35-125, R.C.M. 1947; R.C.M. 1947, 35-123(part), 35-125.

7-15-4467. Reports by authority to municipality. The authority shall, at least once a year, file with the mayor of the city a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part and part 45.

History: En. Sec. 26, Ch. 140, L. 1935; re-en. Sec. 5309.26, R.C.M. 1935; R.C.M. 1947, 35-126.

Part 45
Municipal Housing Authorities
Continued

Part Cross-References
Housing Act of 1975, Title 90, ch. 6, part 1.

7-15-4501. Authorization to issue bonds. The authority shall have power and is hereby authorized to issue, from time to time in its discretion, for any of its corporate purposes:

(1) bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof; or

(b) exclusively from the income and revenues of certain designated housing projects, whether or not they were financed in whole or in part with the proceeds of such bonds; provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated housing project or projects and the funds received from the sale or disposal thereof and, if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues or, in certain instances as hereinafter provided, by a mortgage of the property comprising such designated housing project or projects and the revenue therefrom;

(2) bonds for the payment of the principal and interest of which the credit of the authority is pledged and which may be additionally secured by a pledge of the revenues of the authority or any part thereof pursuant to a resolution or trust indenture of the authority or, in certain instances as hereinafter provided, may be additionally secured by a mortgage of the property and revenues of the authority or any part thereof.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4502. Powers related to loans. An authority shall have power:

(1) to borrow money upon its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenues and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it or in any other manner;

(2) in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects;

(3) in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this part and part 44;

(4) to invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4503. Nature of bonded indebtedness. (1) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(2) The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state, and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority.

(3) The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory provision of the laws of the state. Bonds may be issued under this part and part 44 notwithstanding any debt or other limitation prescribed by any statute.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4504. Bonds and other obligations to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this part and part 44 shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4505. Housing authority bonds as legal investments. (1) The state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority established pursuant to the housing authorities law of this state or issued by any public housing authority or agency in the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof.

(2) It is the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including but not limited to sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

(4) Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling.

History: En. Secs. 1, 3, Ch. 218, L. 1943; R.C.M. 1947, 35-143(part), 35-144.

Cross-References

Security for deposits of public funds, 17-6-103.

7-15-4506. Details relating to bonds. (1) The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series.

(2) The bonds shall bear such date or dates, mature at such time or times (not exceeding 60 years from their respective dates), bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form (either coupon or registered), carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

(3) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(a) covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage, or other instrument; as to the issuance of such bonds in escrow or otherwise; and as to the use and disposition of the proceeds thereof;

(b) covenant as to what other or additional debt may be incurred by it;

(c) provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(d) provide for the replacement of lost, destroyed, or mutilated bonds;

(e) covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

History: (1), (2)En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; Sec. 35-115, R.C.M. 1947; (3)En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; Sec. 35-116, R.C.M. 1947; R.C.M. 1947, 35-115(part), 35-116(part).

7-15-4507. Sale of bonds. (1) The bonds may be sold at public sale held after notice published once at least 10 days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of .... or in the city of .....

(2) Such bonds may be sold to the federal government at private sale without any public advertisement.

(3) The bonds may be sold at such price or prices as the authority shall determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4508. Purchase of bonds by housing authority. (1) The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled.

(2) This section shall not apply to the redemption of bonds.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4509. Interim certificates. Pending the authorization, preparation, execution, or delivery of definitive bonds, the authority may issue interim certificates or other temporary obligations to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form; contain such terms, conditions, and provisions; bear such date or dates; and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture, or mortgage determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4510. Validity and sufficiency of signatures on bonds. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4511. Creation of special funds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) create or authorize the creation of special funds in which there shall be segregated:

(a) the proceeds of any loan and/or grant;

(b) all of the rents, fees, and revenues of any housing project or projects or parts thereof;

(c) any money held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(d) any money held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and

(e) any money held for any other reserves or contingencies; and

(2) covenant as to the use and disposal of the money held in such funds.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4512. Security for money deposited by housing authority. (1) The authority may by resolution provide that all money deposited by it shall be secured by:

(a) obligations of the United States or of the state of a market value equal at all times to the amount of such deposits;

(b) any securities in which savings banks may legally invest funds within their control; or

(c) an undertaking with such sureties as shall be approved by the authority to faithfully keep and pay over upon the order of the authority any such deposits and agreed interest thereon.

(2) All banks and trust companies are authorized to give any such security for such deposits.

History: En. Sec. 24, Ch. 140, L. 1935; re-en. Sec. 5309.24, R.C.M. 1935; R.C.M. 1947, 35-124.

7-15-4513 through 7-15-4520 reserved.

7-15-4521. General powers related to bonds and lease obligations. (1) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(a) execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those specified in 7-15-4506, 7-15-4511, and 7-15-4521 through 7-15-4528, as the government or any purchaser of the bonds of the authority may reasonably require;

(b) make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the authority, tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein;

(c) make covenants, other than in addition to the covenants expressly authorized in this part or part 44, of like or different character.

(2) It is the intention of subsection (1)(b) hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security, that are not inconsistent with the constitution of the state, and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its real or personal property except as provided in 7-15-4526.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4522. Redemption of bonds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to redeem the bonds and covenant for their redemption and provide the terms and conditions thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4523. Amendment or abrogation of bond contracts. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4524. Bond provisions related to determination and use of rents and fees. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) pledge by resolution, trust indenture, mortgage (subject to the limitations imposed in this part), or other contract all or any part of its rents, fees, or revenues;

(2) covenant against pledging all or any part of its rents, fees, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(3) covenant as to the rents and fees to be charged, as to the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4525. Bond provisions related to management and use of property. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant against mortgaging all or any part of its real or personal property, then owned or thereafter acquired, or against permitting or suffering any lien thereon;

(2) covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof or with respect to limitations on its right to undertake additional housing projects;

(3) provide for the release of property, rents, fees, and revenues from any pledge or mortgage and reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(4) covenant that the authority warrants the title to the premises;

(5) covenant as to the use of any or all of its real or personal property;

(6) covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance money.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4526. Power to mortgage property when government financing involved. (1) In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its real or personal property, then owned or thereafter acquired, and thereby:

(a) to vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings so long as a government shall be the holder of any of the bonds secured by such mortgage;

(b) to vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved;

(c) to vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved;

(d) to vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee in its absolute discretion shall elect.

(2) The institution, prosecution, and conclusion of any foreclosure proceedings authorized by subsection (1)(d) and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid.

History: En. Sec. 17, Ch. 140, L. 1935; re-en. Sec. 5309.17, R.C.M. 1935; R.C.M. 1947, 35-117.

7-15-4527. Provisions related to breach or default on bonds and bond covenants. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(2) vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant to be kept or performed on its part, to cure any such default and to advance any money necessary for such purpose, and the money so advanced may be made an additional obligation of the authority with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the authority with reference thereto;

(3) covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(4) covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such housing projects or any part thereof and to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the money collected in accordance with the agreement of the authority with such obligee.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4528. Use of bond trustee. In connection with the issuance of bonds or the incurring of any obligation under a lease and in order to secure the payment of the bonds or obligations, the authority may:

(1) vest in a trustee the right to enforce any covenant made to secure the payment of the bonds or obligations;

(2) provide for the powers and duties of the trustee and limit the trustee's liabilities; and

(3) provide the terms and conditions upon which the trustee or a designated proportion of the holders of bonds may enforce any covenant.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part); amd. Sec. 24, Ch. 253, L. 1979; amd. Sec. 625, Ch. 61, L. 2007.

7-15-4529. General remedies of an obligee of a housing authority. An obligee of the authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) by mandamus, suit, action, or proceeding in law or equity (all of which may be joined in one action), to compel the authority and the commissioners, officers, agents, or employees

thereof to perform each and every term, provision, and covenant contained in any contract of the authority and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this part or part 44;

(2) by suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority;

(3) by suit, action, or proceeding in any court of competent jurisdiction, to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

History: En. Sec. 18, Ch. 140, L. 1935; re-en. Sec. 5309.18, R.C.M. 1935; R.C.M. 1947, 35-118.

7-15-4530. Special remedies of an obligee resulting from mortgage or trust indenture. (1) An authority may by its trust indenture, mortgage, lease, or other contract confer upon an obligee holding or representing a specified amount in bonds, leases, or other obligations the right, upon the happening of an event of default as defined in the instrument:

(a) by suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of a housing project of the authority or any part of a project;

(b) by suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners to account as if it and they were the trustees of an express trust.

(2) If a receiver is appointed pursuant to subsection (1)(a), the receiver may enter and take possession of the housing project or any part of the project, may operate and maintain the project, and may collect and receive all fees, rents, revenue, or other charges arising from the project in the same manner as the authority itself might do. The receiver shall keep the money in a separate account or accounts and apply the money in accordance with the obligations of the authority as the court directs.

History: En. Sec. 19, Ch. 140, L. 1935; re-en. Sec. 5309.19, R.C.M. 1935; R.C.M. 1947, 35-119; amd. Sec. 626, Ch. 61, L. 2007.

7-15-4531. Remedies of obligees to be cumulative. All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

History: En. Sec. 20, Ch. 140, L. 1935; re-en. Sec. 5309.20, R.C.M. 1935; R.C.M. 1947, 35-120.

7-15-4532. Limitations on remedies of obligees. (1) No interest of the authority in any real or personal property shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in 7-15-4526.

(2) All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its real or personal property.

(3) The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in 7-15-4526 and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

History: En. Sec. 21, Ch. 140, L. 1935; re-en. Sec. 5309.21, R.C.M. 1935; R.C.M. 1947, 35-121.

CHAPTER 16
CULTURE, SOCIAL SERVICES, AND RECREATION

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7-16-101. Creation of funds for recreational and other activities of elderly by local governments.
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7-16-4113. Tax levy for band concerts.
7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities.

Part 42 — Municipal Board of Park Commissioners

7-16-4201. Authorization for municipal board of park commissioners.
7-16-4202. Repealed.
7-16-4203. Repealed.
7-16-4204. Repealed.
7-16-4205. Repealed.
7-16-4206. Repealed.
7-16-4207. Repealed.
7-16-4208. Repealed.
7-16-4209. Repealed.
7-16-4210. Repealed.
7-16-4211. Repealed.
7-16-4212. Control of conflict of interest.
7-16-4213 through 7-16-4220 reserved.
7-16-4221. Repealed.
7-16-4222. Rules to implement part.
7-16-4223. Leasing of municipal land for nonpark purposes.
7-16-4224. Repealed.
7-16-4225. Park fund to be maintained.
7-16-4226. Limitation on incurred liability.
7-16-4227. Allowance of claims.
7-16-4228. Disbursement of money.

Part 43 — Municipal Winter Work Program
(Repealed)

Part 1
General Provisions
Affecting Local Governments

7-16-101. Creation of funds for recreational and other activities of elderly by local governments. (1) Subject to 15-10-420, the governing body of a city, county, town, or municipality may in its discretion establish a fund to promote, establish, and maintain recreational, educational, and other activities of the elderly by a levy on taxable property. The tax levy is in addition to all other tax levies.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine. Expenditures must be made for the promotion and development of recreational, educational, and other activities of the elderly, including motivation of the use of the talents of the elderly.

(3) The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities.

History: En. Sec. 1, Ch. 380, L. 1971; R.C.M. 1947, 71-1701; amd. Sec. 48, Ch. 584, L. 1999; amd. Sec. 57, Ch. 574, L. 2001.

Cross-References

Montana Older Americans Act, Title 52, ch. 3, part 5.

7-16-102. Use of county lands for public parks and recreational grounds. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park or recreational grounds.

(2) The conveyance is subject to the provisions of 7-8-102.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Parts 2 through 20 reserved

Part 21
General Provisions
Affecting County Government

7-16-2101. Construction and maintenance of county cultural, social, and recreational facilities. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a civic center, a youth center, park buildings, museums, recreation centers, and any combination thereof to be erected, furnished, and maintained.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities. (1) Subject to 15-10-420, the board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a tax for the purpose of maintaining, operating, and equipping parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, parks, and facilities.

(2) (a) The board of county commissioners shall submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a petition requesting an election, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted as provided in 15-10-425.

(c) The board of county commissioners shall levy the tax if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes apply to the collection of the tax provided for in this section.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part); amd. Sec. 1, Ch. 639, L. 1985; amd. Sec. 49, Ch. 584, L. 1999; amd. Sec. 17, Ch. 495, L. 2001; amd. Sec. 58, Ch. 574, L. 2001.

7-16-2103. Establishment of fund. (1) All funds derived from the tax authorized by 7-16-2102 constitute a separate fund deposited with the county treasurer. The fund shall not be used for any purposes except for county parks and any civic center, cultural facility, youth center, recreation center, recreational complex, or any combination thereof.

(2) All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part); amd. Sec. 2, Ch. 639, L. 1985.

7-16-2104. Multicounty youth guidance centers. Two or more counties of this state may, through action of their respective boards of county commissioners, join together by contract in the establishment of a joint county youth guidance center. The cost and expenses of such joint county youth guidance center shall be apportioned between or among the contracting counties on such a basis as to be agreed upon by said contracting counties.

History: En. Sec. 1, Ch. 24, L. 1961; R.C.M. 1947, 16-1008B.

7-16-2105. Acquisition of land by county for public recreational or cultural purposes. A county may acquire, by purchase, grant, deed, gift, devise, condemnation pursuant to Title 70, chapter 30, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination of the enumerated uses. A county may lease the land tracts, each of which must be situated so that it offers ready access to a public highway.

History: En. Sec. 1, Ch. 51, L. 1929; re-en. Sec. 4444.1, R.C.M. 1935; amd. Secs. 1, 2, Ch. 239, L. 1947; R.C.M. 1947, 62-101; amd. Sec. 9, Ch. 543, L. 1995; amd. Sec. 38, Ch. 42, L. 1997; amd. Sec. 25, Ch. 125, L. 2001; amd. Sec. 31, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 deleted former (2) that read: "(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203"; and made minor changes in style. Amendment effective July 1, 2009.

7-16-2106. Limitation on use of lands. All tracts of land acquired under 7-16-2105 shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number.

History: En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).

7-16-2107. Expenditures for county parks. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, maintaining, and equipping county parks.

History: En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).

7-16-2108. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) Subject to 15-10-420, the governing body of a county, city, town, or municipality may establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy on the taxable property within the county, city, town, or municipality. The tax levy is in addition to all other tax levies.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine, provided that expenditures must be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes.

History: En. Sec. 1, Ch. 244, L. 1983; amd. Sec. 50, Ch. 584, L. 1999; amd. Sec. 59, Ch. 574, L. 2001.

Cross-References

Municipal day-care facilities, 7-16-4114.

Child day-care centers, Title 52, ch. 2, part 7.

7-16-2109. Single assessment for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction. (1) Subject to 15-10-420 and except as provided in subsection (2) of this section, the county commissioners of a county who have levied taxes pursuant to 7-16-2102 may combine that levy with any fees assessed in accordance with 7-11-1024 into a single assessment for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single assessment provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single assessment, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk and recorder at least 90 days prior to the date of the general election.

(b) The question must be submitted as provided in 15-10-425.

(c) The board of county commissioners shall collect the assessment if the imposition or continued imposition of the single assessment is approved by a majority of the electors voting on the question.

History: En. Sec. 1, Ch. 48, L. 1993; amd. Sec. 51, Ch. 584, L. 1999; amd. Sec. 18, Ch. 495, L. 2001; amd. Sec. 60, Ch. 574, L. 2001; amd. Sec. 32, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 throughout section in four places substituted "single assessment" for "single tax"; in (1) near middle of first sentence after "pursuant to" substituted "7-16-2102 may combine that levy with any fees assessed in accordance with 7-11-1024" for "both 7-16-2102 and 7-21-3410 may combine the two taxes"; in (2)(c) substituted "collect the assessment" for "levy the tax"; and made minor changes in style. Amendment effective July 1, 2009.

7-16-2110 through 7-16-2120 reserved.

7-16-2121. Temporary permit for operation of out-of-state motorboat — violation — penalty — disposition of proceeds. (1) A temporary permit may be required by a county for operation of a motorboat on waters within the county if the motorboat is from a state that requires a similar temporary permit for operation in that state of a motorboat licensed in Montana. The permit may be purchased from the county for a fee of $10. When properly affixed to the motorboat, such permit authorizes the operation of the motorboat for a period of 30 days within the county. The county shall provide reasonable notice of the permit requirement and shall make the permits available to the public.

(2) The temporary permit must be issued in the form of a decal that must denote the time during which it is valid. The decal must be conspicuously displayed on the motorboat during all times of operation.

(3) A person who operates a motorboat in violation of 23-2-511(1)(c) or this section is guilty of a misdemeanor and shall be fined no more than $50.

(4) All proceeds received by the county from payment of the permit fee must be used in enforcing compliance with the temporary permit and developing and maintaining public boating access and facilities.

History: **En. Sec. 2, Ch. 118, L. 1987.**

Part 22
County Museums, Facilities for the Arts, and Museum Districts (Repealed)

7-16-2201. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part); amd. Sec. 1, Ch. 313, L. 1989; amd. Sec. 2, Ch. 217, L. 2007.**

7-16-2202. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part); amd. Sec. 1, Ch. 455, L. 1985; amd. Sec. 2, Ch. 313, L. 1989; amd. Sec. 1, Ch. 440, L. 1993.**

7-16-2203. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part); amd. Sec. 3, Ch. 313, L. 1989; amd. Sec. 1, Ch. 681, L. 1991; amd. Sec. 10, Ch. 543, L. 1995.**

7-16-2204. Repealed. Sec. 25, Ch. 543, L. 1995.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part); amd. Sec. 4, Ch. 313, L. 1989.**

7-16-2205. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 2, Ch. 17, L. 1945; amd. Sec. 2, Ch. 173, L. 1975; R.C.M. 1947, 16-1164; amd. Sec. 1, Ch. 294, L. 1983; amd. Sec. 2, Ch. 455, L. 1985; amd. Sec. 5, Ch. 313, L. 1989; amd. Sec. 2, Ch. 440, L. 1993; amd. Sec. 52, Ch. 584, L. 1999; amd. Sec. 61, Ch. 574, L. 2001; amd. Sec. 13, Ch. 505, L. 2007.**

7-16-2206 through 7-16-2210 reserved.

7-16-2211. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 1, Ch. 505, L. 2007.**

7-16-2212. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 2, Ch. 505, L. 2007.**

7-16-2213. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 3, Ch. 505, L. 2007.**

7-16-2214. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 4, Ch. 505, L. 2007.**

7-16-2215. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5, Ch. 505, L. 2007.**

7-16-2216. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 6, Ch. 505, L. 2007.**

7-16-2217. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 7, Ch. 505, L. 2007.**

7-16-2218. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 8, Ch. 505, L. 2007.**

7-16-2219. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 9, Ch. 505, L. 2007.**

Part 23
County Board of Park Commissioners

Part Cross-References

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-2301. Authorization for county board of park commissioners. There may be created in each county a board of park commissioners subject to the provisions of 7-1-201 through 7-1-203.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part); amd. Sec. 11, Ch. 543, L. 1995.

7-16-2302. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part); amd. Sec. 2, Ch. 681, L. 1991.

7-16-2303. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part); amd. Sec. 3, Ch. 681, L. 1991.

7-16-2304. Repealed. Sec. 8, Ch. 681, L. 1991.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2305. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).

7-16-2306. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).

7-16-2307. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2308. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2309. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2310. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).

7-16-2311. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).

7-16-2312. County park superintendent. The board of park commissioners may employ a park superintendent, who may also be the secretary of the park board and who shall attend each regular meeting of the board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which the superintendent has supervision. The duties of the park superintendent must be of a managerial capacity.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(2); amd. Sec. 627, Ch. 61, L. 2007.

7-16-2313. Repealed. Sec. 25, Ch. 543, L. 1995.

History: Ap. p. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; Ap. p. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

7-16-2314. Control of conflict of interest and nepotism. (1) No park commissioner, directly or indirectly, shall be interested in or benefit by any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

(2) The laws of nepotism shall apply to employment under this part.

History: (1)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (2)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

Cross-References

Nepotism, Title 2, ch. 2, part 3.

7-16-2315 through 7-16-2320 reserved.

7-16-2321. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2322. Rules and ordinances to implement part. (1) (a) A county park board, in addition to powers and duties now given under law, has the following powers and duties:

(i) to make rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of the board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(ii) to make rules for the use of land and facilities by the public; and

(iii) to provide penalties for the violation of the rules.

(b) The rules authorized by subsection (1) have the force of resolutions of the county commissioners.

(2) The county governing body, by the adoption of an ordinance in substantial compliance with the provisions of 7-5-103 through 7-5-107, may:

(a) provide that violations of specific rules adopted pursuant to subsection (1) constitute criminal offenses and are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county park warden to enforce park rules and ordinances. A county park warden is not a peace officer, as defined in 46-1-202. The law enforcement powers of a park warden are limited to issuing citations charging violations of park ordinances and rules.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part); amd. Sec. 1, Ch. 415, L. 1985; amd. Sec. 250, Ch. 800, L. 1991.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-16-2323. Leasing of county land for nonpark purposes. A county park board, in addition to powers and duties now given under law, shall have the power and duty to lease lands owned by the county, heretofore acquired for parks, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the county. Such lands shall not be leased for a longer time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of chapter 8, part 25, and this section, lands dedicated to the public use for park or playground purposes under 76-3-621 are considered county lands unless conveyance to a governmental unit other than a county is provided by law or agreement.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under chapter 8, part 25, and this section.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of the park or playground lands, giving the people of the county opportunity to be heard regarding the action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body for the action; and

(f) comply with any other applicable requirements under chapter 8, part 25.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication.

History: En. 16-4808 by Sec. 5, Ch. 540, L. 1975; R.C.M. 1947, 16-4808; amd. Sec. 25, Ch. 253, L. 1979; amd. Sec. 28, Ch. 349, L. 1985; amd. Sec. 1, Ch. 468, L. 1995; amd. Sec. 1, Ch. 333, L. 2005.

7-16-2325. Power of park board to employ persons and to make contracts. (1) A county park board may:

(a) employ and discharge workers, laborers, engineers, foresters, and others and fix their compensation;

(b) make all contracts necessary or convenient for carrying out any of the powers conferred and duties enjoined upon the board by this part.

(2) All contracts made by the board must be in the name of the county and must be signed by the president or, in the president's absence, by the vice president of the board. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with notice and report being made to the

board of county commissioners, the contracts may be signed by the presiding officer of the board of county commissioners and attested by the county clerk and recorder.

(3) An order or resolution authorizing the making of a contract may not be passed or adopted except by a yea and nay vote, which must be recorded in full in the minutes of the secretary.

History: (1)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; (2)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (3)En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; Sec. 16-4805, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part), 16-4805(part); amd. Sec. 628, Ch. 61, L. 2007.

7-16-2326. Discrimination in employment prohibited. No contract of employment may be entered into except in compliance with federal and state statutes, orders, and rules providing that there may be no discrimination in employment.

History: En. Sec. 6, Ch. 306, L. 1967; amd. Sec. 3, Ch. 38, L. 1977; R.C.M. 1947, 16-4806; amd. Sec. 26, Ch. 253, L. 1979.

Cross-References

Illegal discrimination, Title 49, ch. 2.

7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties given under law, may contract an indebtedness on behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including existing indebtedness, may not at any time exceed 0.79% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part); amd. Sec. 54, Ch. 614, L. 1981; amd. Sec. 10, Ch. 695, L. 1985; amd. Sec. 6, Ch. 655, L. 1987; amd. Sec. 71, Ch. 11, Sp. L. June 1989; amd. Sec. 15, Ch. 9, Sp. L. November 1993; amd. Sec. 26, Ch. 451, L. 1995; amd. Sec. 12, Ch. 543, L. 1995; amd. Sec. 6, Ch. 466, L. 1997; amd. Sec. 9, Ch. 285, L. 1999; amd. Sec. 29, Ch. 426, L. 1999; amd. Sec. 24, Ch. 556, L. 1999; amd. Sec. 9, Ch. 7, L. 2001; amd. Sec. 19, Ch. 29, L. 2001.

7-16-2328. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).

7-16-2329. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).

7-16-2330. Allowance of claims. (1) Subject to the provisions of subsection (2), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which has been incurred by the board.

(2) A claim may not be audited or paid until an itemized account of the claim, in writing and signed by the claimant or the claimant's authorized agent, has been filed in the office of the secretary of the board.

(3) An order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 may not be passed or adopted except by a yea and nay vote, which must be recorded in full in the minutes of the secretary.

History: En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; R.C.M. 1947, 16-4805(part); amd. Sec. 629, Ch. 61, L. 2007.

7-16-2331. Disbursement of money. All money paid out by the park commissioners under the provisions of this part must be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president or, in the president's absence, by the vice president of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with notice and report made to the board of county commissioners, authorized payments may be made by warrant drawn upon the county treasury, signed by the presiding officer of the board of county commissioners and countersigned by the county clerk and recorder.

History: **En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part); amd. Sec. 27, Ch. 253, L. 1979; amd. Sec. 630, Ch. 61, L. 2007.**

7-16-2332. Acceptance of federal aid authorized. The park commissioners shall have authority to accept grants or loans from the United States government, subject to agreements in conformance to federal laws and regulations relating thereto, notwithstanding any provision of this part or other state statutes to the contrary.

History: **En. Sec. 7, Ch. 306, L. 1967; R.C.M. 1947, 16-4807.**

Part 24
County Park Districts
(Repealed)

7-16-2401. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 1, Ch. 377, L. 1985; amd. Sec. 1, Ch. 175, L. 2005.**

7-16-2402. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 2, Ch. 377, L. 1985.**

7-16-2403. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 3, Ch. 377, L. 1985; amd. Sec. 1, Ch. 144, L. 1993.**

7-16-2404 through 7-16-2410 reserved.

7-16-2411. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 4, Ch. 377, L. 1985; amd. Sec. 2, Ch. 144, L. 1993; amd. Sec. 56, Ch. 387, L. 1995; amd. Sec. 1, Ch. 510, L. 1999; amd. Sec. 53, Ch. 584, L. 1999; amd. Sec. 19, Ch. 495, L. 2001; amd. Sec. 62, Ch. 574, L. 2001.**

7-16-2412. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 5, Ch. 377, L. 1985; amd. Sec. 3, Ch. 144, L. 1993; amd. Sec. 2, Ch. 510, L. 1999; amd. Sec. 20, Ch. 495, L. 2001; amd. Sec. 63, Ch. 574, L. 2001.**

7-16-2413. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 6, Ch. 377, L. 1985; amd. Sec. 4, Ch. 144, L. 1993.**

7-16-2414 through 7-16-2420 reserved.

7-16-2421. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 7, Ch. 377, L. 1985; amd. Sec. 1, Ch. 123, L. 1989; amd. Sec. 5, Ch. 144, L. 1993; amd. Sec. 5, Ch. 254, L. 1999.**

7-16-2422. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 8, Ch. 377, L. 1985.**

7-16-2423. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 9, Ch. 377, L. 1985; amd. Sec. 6, Ch. 144, L. 1993; amd. Sec. 3, Ch. 510, L. 1999; amd. Sec. 54, Ch. 584, L. 1999; amd. Sec. 2, Ch. 175, L. 2005.**

7-16-2424 through 7-16-2430 reserved.

7-16-2431. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 10, Ch. 377, L. 1985; amd. Sec. 7, Ch. 144, L. 1993; amd. Sec. 4, Ch. 510, L. 1999; amd. Sec. 55, Ch. 584, L. 1999; amd. Sec. 64, Ch. 574, L. 2001.**

7-16-2432. Repealed. Sec. 253, Ch. 574, L. 2001.

History: **En. Sec. 11, Ch. 377, L. 1985.**

7-16-2433. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 12, Ch. 377, L. 1985; amd. Sec. 20, Ch. 29, L. 2001; amd. Sec. 3, Ch. 175, L. 2005.**

7-16-2434 through 7-16-2440 reserved.

7-16-2441. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 13, Ch. 377, L. 1985.**

7-16-2442. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 14, Ch. 377, L. 1985; amd. Sec. 57, Ch. 387, L. 1995; amd. Sec. 57, Ch. 354, L. 2001.**

7-16-2443. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 15, Ch. 377, L. 1985; amd. Sec. 5, Ch. 510, L. 1999; amd. Sec. 56, Ch. 584, L. 1999; amd. Sec. 65, Ch. 574, L. 2001; amd. Sec. 16, Ch. 451, L. 2005.

Parts 25 through 40 reserved

Part 41
General Provisions Affecting Municipal Government

7-16-4101. Municipal authority to establish, alter, and maintain parks. The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve parks and to vacate the same.

History: En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; R.C.M. 1947, 11-906(part).

Cross-References

Municipal authority — public grounds, 7-14-4101.

7-16-4102. Planting and protection of trees. The city or town council has power to provide for the planting of trees and the protection of the same.

History: En. Subd. 59, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.58, R.C.M. 1935; R.C.M. 1947, 11-961.

Cross-References

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-4103. Authorization to establish various cultural, social, and recreational facilities. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, may in their discretion procure, construct, establish, maintain, and operate swimming pools, skating rinks, playgrounds, civic centers, youth centers, and museums and defray the cost and expense of procuring, constructing, establishing, equipping, maintaining, and operating the same from the funds of said city or town raised for such purposes.

(2) Power and authority is hereby granted to the city or town council of all cities and towns incorporated under the laws of Montana to make and pass all bylaws, ordinances, resolutions, rules, and orders necessary for the procurement, establishment, equipment, maintenance, regulation, and operation of swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using the same.

(3) Said city or town council is further authorized in its discretion to place any or all of said institutions under the control and management of the board of park commissioners.

History: (1)En. Sec. 1, Ch. 41, L. 1917; re-en. Sec. 5166, R.C.M. 1921; re-en. Sec. 5166, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1941; amd. Sec. 2, Ch. 71, L. 1945; Sec. 62-208, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 41, L. 1917; re-en. Sec. 5167, R.C.M. 1921; re-en. Sec. 5167, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1941; amd. Sec. 3, Ch. 71, L. 1945; Sec. 62-209, R.C.M. 1947; R.C.M. 1947, 62-208, 62-209.

7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit of the city or town, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise a swimming pool facility, athletic field, skating rink, playground, museum, golf course, site and building for a civic center, youth center, or any combination of these facilities; and

(c) for furnishing, equipping, repairing, or rehabilitating a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the existing indebtedness, may not at any time exceed 0.9% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.

(b) Money may not be borrowed for any purpose on bonds issued for the purchase of lands and improving the land until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor of the proposition.

History: En. Sec. 1, Ch. 55, L. 1909; re-en. Sec. 5159, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1923; re-en. Sec. 5159, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1945; amd. Sec. 1, Ch. 64, L. 1947; R.C.M. 1947, 62-201; amd. Sec. 28, Ch. 253, L. 1979; amd. Sec. 55, Ch. 614, L. 1981; amd. Sec. 14, Ch. 459, L. 1997; amd. Sec. 1, Ch. 136, L. 1999; amd. Sec. 30, Ch. 426, L. 1999; amd. Sec. 25, Ch. 556, L. 1999; amd. Sec. 21, Ch. 29, L. 2001.

7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities. Subject to 15-10-420 and for the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combination of purposes and facilities, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, a tax on the taxable value of all taxable property in the city or town.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part); amd. Sec. 57, Ch. 584, L. 1999; amd. Sec. 66, Ch. 574, L. 2001.

7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) A city or town council may:

(a) acquire by gift, purchase, or condemnation pursuant to Title 70, chapter 30, lands for athletic fields and civic stadiums within or outside of the corporate limits of the municipality;

(b) establish and regulate athletic fields and civic stadiums;

(c) exercise municipal jurisdiction over the acquired land when the land or any portion of the land is outside of the corporate limits of the municipality to the same extent as though the land was within the corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums on the land.

(2) The city or town council may set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums.

History: En. Sec. 1, Ch. 68, L. 1929; re-en. Sec. 5167.1, R.C.M. 1935; R.C.M. 1947, 62-210; amd. Sec. 26, Ch. 125, L. 2001.

Cross-References

Eminent domain, Title 70, ch. 30.

7-16-4107. Use of park funds for public recreation. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 29, Ch. 253, L. 1979.

Cross-References

Tax levy for band concerts, 7-16-4113.
Park fund, 7-16-4225.
Public recreation program, 20-7-801.

7-16-4108. Operation of public recreation programs. (1) Any city, town, or school district or any board thereof, including any board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program in any manner upon which they may mutually agree, or it or they may delegate the operation of the program to a board of recreation created by any city, town, or school district or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all money appropriated for the purposes of such program may be expended by such board.

(2) Any corporation, board, or body designated in this section, given authority to operate and conduct a recreation program or given charge of such program, is authorized to employ directors and instructors of said recreational work and to conduct its activities on:

(a) property under its custody and management;

(b) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(c) private property, with the consent of its owners.

History: (1)En. Sec. 2, Ch. 71, L. 1939; Sec. 62-212, R.C.M. 1947; (2)En. Sec. 3, Ch. 71, L. 1939; Sec. 62-213, R.C.M. 1947; R.C.M. 1947, 62-212, 62-213(part).

Cross-References

Operation of public recreation program, 20-7-802.

7-16-4109. Gifts and bequests for public recreation. Any corporation, board, or body designated in 7-16-4108, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work.

History: En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213(part).

Cross-References

Authority to accept gifts, 20-7-803.

7-16-4110. Establishment and maintenance of public baths. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town.

(2) Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all bylaws, ordinances, resolutions, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: En. Secs. 1, 2, Ch. 12, L. 1905; re-en. Secs. 3294, 3295, Rev. C. 1907; re-en. Secs. 5045, 5046, R.C.M. 1921; re-en. Secs. 5045, 5046, R.C.M. 1935; R.C.M. 1947, 11-1008(part), 11-1009.

7-16-4111. Financing of public baths. To defray the cost and expense of maintaining the public bathing place authorized by 7-16-4110, a city or town may contract an indebtedness upon behalf of the city or town and upon the credit thereof by borrowing money or issuing bonds. No money may be borrowed and no bonds may be issued until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast therefor.

History: En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907; re-en. Sec. 5045, R.C.M. 1921; re-en. Sec. 5045, R.C.M. 1935; R.C.M. 1947, 11-1008(part); amd. Sec. 30, Ch. 253, L. 1979.

7-16-4112. Presentation of public band concerts. (1) Cities of the first, second, and third class, as defined by the laws of Montana, and incorporated towns may at their discretion provide public band concerts for the entertainment of their people and to pay therefor out of any money in a fund to be provided in accordance with the provisions of 7-16-4113.

(2) Said band concerts and entertainment shall be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week. No band shall be employed in connection with the giving of said band concerts except one having its headquarters in the city or town in which said band concert is given.

History: En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921; re-en. Sec. 5047, R.C.M. 1921; re-en. Sec. 5047, R.C.M. 1935; R.C.M. 1947, 11-1010.

7-16-4113. Tax levy for band concerts. Subject to 15-10-420 and for the purpose of providing band concerts, the council or other governing body in any city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, a tax on the taxable value of all taxable property of the city or town.

History: En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R.C.M. 1921; re-en. Sec. 5048, R.C.M. 1935; amd. Sec. 23, Ch. 566, L. 1977; R.C.M. 1947, 11-1011; amd. Sec. 58, Ch. 584, L. 1999; amd. Sec. 67, Ch. 574, L. 2001.

7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) Subject to 15-10-420, the governing body of a county, city, town, or municipality may establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy on the taxable property in the county, city, town, or municipality. The tax levy is in addition to all other tax levies.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine, provided that expenditures must be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes.

History: En. 10-802.1 by Sec. 1, Ch. 392, L. 1973; R.C.M. 1947, 10-802.1; amd. Sec. 1, Ch. 244, L. 1983; amd. Sec. 59, Ch. 584, L. 1999; amd. Sec. 68, Ch. 574, L. 2001.

Cross-References

County day-care centers, 7-16-2108.
Child day-care centers, Title 52, ch. 2, part 7.

Part 42
Municipal Board of Park Commissioners

Part Cross-References

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-4201. Authorization for municipal board of park commissioners. There may be created by ordinance in all cities of the first and second class a board of park commissioners, whether the cities are a council form of government or city-manager form. The ordinance must meet the same requirements as those provided for a county resolution in 7-1-201.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 13, Ch. 543, L. 1995.

7-16-4202. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 1, Ch. 409, L. 1993.

7-16-4203. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 31, Ch. 253, L. 1979.

7-16-4204. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4205. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4206. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4207. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4208. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4209. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 1, Ch. 12, L. 1989; amd. Sec. 3, Ch. 409, L. 1993.

7-16-4210. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4211. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4212. Control of conflict of interest. No park commissioner shall be interested in any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

History: **En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).**

7-16-4213 through 7-16-4220 reserved.

7-16-4221. Repealed. Sec. 25, Ch. 543, L. 1995.

History: **En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(part).**

7-16-4222. Rules to implement part. (1) In addition to the powers and duties established in the ordinance creating the board of park commissioners and the provisions of 7-16-4223 and 7-16-4225 through 7-16-4228, the board of park commissioners has the following powers and duties:

(a) to make all rules necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of the board and for the protection of all birds inhabiting, frequenting, or nesting in the parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of the rules.

(2) The rules authorized by this section have the force of city ordinances and may be enforced as ordinances of the city are enforced.

History: **En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(3); amd. Sec. 14, Ch. 543, L. 1995; amd. Sec. 39, Ch. 42, L. 1997.**

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-16-4223. Leasing of municipal land for nonpark purposes. The board of park commissioners shall have the power and be charged with the duty to lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the city. Such lands shall not be leased for a longer term at any one time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: **En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(5).**

Cross-References

Leasing municipal property, 7-8-4201.

7-16-4224. Repealed. Sec. 25, Ch. 543, L. 1995.

History: **(1)En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; Sec. 62-204, R.C.M. 1947; (2)En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; Sec. 62-206, R.C.M. 1947; (3)En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; Sec. 62-207, R.C.M. 1947; R.C.M. 1947, 62-204(part), 62-206(part), 62-207(part); amd. Sec. 2, Ch. 409, L. 1993.**

7-16-4225. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners for the sale of hay, trees, or plants; from the leasing of park lands; or from any other source shall be paid into the city treasury. The city treasurer shall keep all such money in a separate fund to be known as the park fund.

History: **En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).**

7-16-4226. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the city in excess of money on hand in or taxes actually levied for said park fund.

History: **En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).**

7-16-4227. Allowance of claims. (1) Subject to the provisions of subsection (2) and except as provided in subsection (4), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which must have been incurred by the board.

(2) A claim may not be audited or paid until an itemized account of the claim, in writing and verified by the oath of the claimant or the claimant's authorized agent, has been filed in the office of the clerk of the board.

(3) An order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 may not be passed or adopted except by a yea and nay vote, which must be recorded in full in the minutes by the clerk.

(4) A city may elect to have all claims allowed or disallowed by the governing body of the city.

History: En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; R.C.M. 1947, 62-207(part); amd. Sec. 4, Ch. 409, L. 1993.

7-16-4228. Disbursement of money. (1) Except as provided in subsection (2), all money paid out by the park commissioners under the provisions of this part must be by warrant drawn upon the city treasury, which must be signed by the city clerk and countersigned by the president or, in the president's absence, by the vice president of the board of park commissioners.

(2) A city may elect to have all warrants signed by the city clerk and countersigned by the mayor or city manager.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part); amd. Sec. 32, Ch. 253, L. 1979; amd. Sec. 5, Ch. 409, L. 1993.

Part 43
Municipal Winter Work Program
(Repealed)

7-16-4301. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 1, Ch. 68, L. 1965; R.C.M. 1947, 41-1901.

7-16-4302. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4303. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4304. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).

7-16-4305. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).

7-16-4306. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 4, Ch. 68, L. 1965; R.C.M. 1947, 41-1904.

7-16-4307. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 5, Ch. 68, L. 1965; R.C.M. 1947, 41-1905.

7-16-4308. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 6, Ch. 68, L. 1965; R.C.M. 1947, 41-1906; amd. Sec. 1, Ch. 349, L. 1981.

7-16-4309. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 7, Ch. 68, L. 1965; R.C.M. 1947, 41-1907.

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7-21-4205. Licensing and regulating of vehicles engaged in transporting persons and property.
7-21-4206. Control of erection of signs and awnings.
7-21-4207. Authority to require records for pawn, secondhand, and junk shops.
7-21-4208. Regulation of purchases from minors by pawn, secondhand, and junk shops.
7-21-4209. Establishment and supervision of markets.
7-21-4210. Regulation of dance houses.
7-21-4211. Repealed.
7-21-4212. Repealed.

Chapter Cross-References

Professions and Occupations, Title 37.
Agriculture, Title 80.
Livestock, Title 81.

Parts 1 through 9 reserved

Part 10
Property Development Review

Part Cross-References

Legal authority for government action, Title 2, ch. 11, part 1.

7-21-1001. Legislative findings and purpose. (1) The legislature finds that:

(a) it is necessary and desirable as a matter of public policy to:

(i) provide for reasonable certainty, stability, and fairness in the land use planning and regulatory process;

(ii) stimulate economic growth;

(iii) secure the reasonable investment-backed expectations of a landowner; and

(iv) foster cooperation between the public and private sectors in land use planning and regulation;

(b) the ability of a landowner to be certain of the applicable regulations and review procedures upon submitting a complete application for local government approval of a site-specific development plan will preserve the prerogatives and authority of a local government with respect to land use matters;

(c) the establishment of regulatory certainty:

(i) will promote the goals specified in this section in a manner consistent with Article II, sections 3, 17, and 29, of the Montana constitution that guarantee to each person the inalienable right to acquire, possess, and protect property and that recognize the corresponding responsibilities; and

(ii) is a matter of statewide concern.

(2) It is the purpose of this part to:

(a) provide fair standards to protect the rights of a person who submits a development application to a local government while recognizing the public health, safety, and general welfare purposes of development review; and

(b) require a local government to comply with these standards.

History: En. Sec. 1, Ch. 516, L. 2005.

7-21-1002. Definitions. As used in this part, the following definitions apply:

(1) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an heir, a successor, or an assignee of the ownership interest.

(2) "Local government" means the governing body of a county, a municipality, or a consolidated city-county that exercises planning or zoning authority. The term includes a board, commission, or agency of the local government that has review or approval authority of a site-specific development plan.

(3) "Property" means real property subject to land use regulation by a local government.

(4) (a) "Site-specific development plan" means a plan that has been submitted to a local government by a landowner or the landowner's representative and that describes, with reasonable certainty, the type, density, and intensity of use for a specific property. The plan may be in the form of but is not limited to an application or plan for:

(i) a site plan;

(ii) a conditional or special use approval; or

(iii) any other land use approval designation used by a local government.

(b) The term does not include a request for a variance.

History: En. Sec. 2, Ch. 516, L. 2005.

7-21-1003. Local government regulations — restrictions. (1) Unless a specific review process for an application is otherwise provided by law, the local government shall provide the applicant with a written receipt showing the date and time that the site-specific development plan was first submitted to the local government. The local government shall establish, by ordinance or resolution, a completeness review process, including time periods within which to determine whether the application contains all of the information required by the local government's ordinances, resolutions, or other regulations, and shall notify the applicant of the local government's determination as to whether or not the application is complete. If the applicant fails to submit the missing information within any applicable time period, the local government may deny approval of the site-specific development plan as an incomplete submission. A determination that a site-specific development plan is complete under this section does not limit the ability of the local government to request additional information during the review process.

(2) Except as provided under 76-2-206 or 76-2-306 or unless otherwise agreed to in writing by the applicant, the review and approval, approval with conditions, or denial of the site-specific development plan must be based solely upon the ordinances and regulations in effect at the time that the complete site-specific development plan was submitted to the local government entity that has jurisdiction over the application. Nothing in this subsection affects the ability of a local government to develop and impose conditions on a site-specific development plan as otherwise provided by law or by locally adopted ordinances or regulations.

History: En. Sec. 3, Ch. 516, L. 2005.

Parts 11 through 20 reserved

Part 21
General County Licensing Authority

Part Cross-References

Temporary permit for operation of out-of-state motorboat, 7-16-2121.
Corporation license or income tax, Title 15, ch. 31.
Mining license tax, Title 15, ch. 37.
Public contractor's license and tax, Title 15, ch. 50.
Electrical energy producer's license tax, Title 15, ch. 51.
Retail telecommunications excise tax, Title 15, ch. 53.
Freight line company license tax, Title 15, ch. 55.

7-21-2101. General licensing power of counties. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to grant such licenses as are provided by law.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2102. Procedure to supply license blanks. (1) The county clerk and recorder shall prepare and have printed blank licenses as may be required, and after affixing the clerk's official seal to the licenses, the clerk shall deliver the licenses to the county treasurer. At the time of delivery, the clerk shall charge the county treasurer with the licenses by appropriate entry in the clerk's records showing the amount, numbers, and classes of licenses furnished.

(2) As licenses are issued and accounted for by the county treasurer, the county clerk and recorder shall credit the account with all licenses issued and accounted for, so that the account will at all times show the number of licenses furnished to the treasurer, their numbers, the number issued or canceled, and the number remaining in the hands of the county treasurer.

(3) On the first Monday in each month, the county treasurer shall return to the county clerk and recorder all licenses unsold and show that the treasurer has paid into the county treasury all money collected for licenses sold during the preceding month.

History: (1), (2)En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909; re-en. Sec. 2410, R.C.M. 1921; Cal. Pol. C. Sec. 3356; amd. Sec. 1, Ch. 54, L. 1933; re-en. Sec. 2410, R.C.M. 1935; Sec. 84-2701, R.C.M. 1947; (3)En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907; re-en. Sec. 2417, R.C.M. 1921; Cal. Pol. C. Sec. 3363; re-en. Sec. 2417, R.C.M. 1935; Sec. 84-2706, R.C.M. 1947; R.C.M. 1947, 84-2701, 84-2706; amd. Sec. 631, Ch. 61, L. 2007.

Cross-References

Role and duties of County Clerk, 7-4-2611.
Office of County Treasurer, 7-4-3002.
County printing, Title 18, ch. 7, part 4.

7-21-2103. Determination of persons required to obtain licenses — classes of licenses. (1) The county treasurer shall make diligent inquiry as to all persons in the county required to pay a license fee as provided in this part.

(2) Whenever the licenses are divided into classes, the county treasurer shall require each person to state, under oath or affirmation, the probable amount of business that the person, the firm of which the person is a member or for which the person is an agent or attorney, or the association or corporation of which the person is the president, secretary, or managing agent will do in the succeeding 3 months. The person, agent, president, secretary, or other officer shall procure a license from the county treasurer for the term desired and the proper class. In all cases in which an underestimate has been made by the party applying, the party making the underestimate or the company that the party represented is required to pay double the sum otherwise required for a license for the next quarter.

History: En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907; re-en. Sec. 2415, R.C.M. 1921; Cal. Pol. C. Sec. 3361; re-en. Sec. 2415, R.C.M. 1935; R.C.M. 1947, 84-2704; amd. Sec. 1, Ch. 249, L. 1979; amd. Sec. 632, Ch. 61, L. 2007.

Cross-References

Office of County Treasurer, 7-4-3002.
Agency, Title 28, ch. 10.
Business corporations, Title 35, ch. 1.
Attorneys at law, Title 37, ch. 61.

7-21-2104. Lien arising from license. (1) All property held or used in any trade, occupation, or profession for which a license is required by the provisions of this part is liable for such license and subject to a lien for the amount thereof. This lien has precedence of any other lien, claim, or demand.

(2) If any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person and sell the same in the manner provided in 15-17-911.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907; re-en. Sec. 2419, R.C.M. 1921; re-en. Sec. 2419, R.C.M. 1935; R.C.M. 1947, 84-2707; amd. Sec. 28, Ch. 587, L. 1987.

Cross-References

Office of County Treasurer, 7-4-3002.
Liens, Title 71, ch. 3.

7-21-2105. Disbursement of license fees. All money collected by the county treasurer for licenses issued by the county under this chapter must be paid into the treasury of the county for the use of the county.

History: En. Sec. 1, Ch. 67, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R.C.M. 1921; re-en. Sec. 2420, R.C.M. 1935; amd. Sec. 104, Ch. 147, L. 1963; R.C.M. 1947, 84-2708; amd. Sec. 2, Ch. 249, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 214, L. 1997.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2106 through 7-21-2110 reserved.

7-21-2111. General license requirements. (1) A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the business or occupation.

(2) The license authorizes the party to transact the business described in the license in the town, city, or particular locality in the county.

(3) Separate licenses must be obtained for each branch establishment or separate house of business located in the same county.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part); amd. Sec. 633, Ch. 61, L. 2007.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

7-21-2112. Compliance with municipal regulation also required. No license issued under this part authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes unless such person, in addition to the license provided by this part, also procures the license required by the ordinances or orders of such city or town.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).

Cross-References

Municipal licensing authority, Title 7, ch. 21, part 41.

7-21-2113. Effect of failure to comply with licensing requirements. Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of Montana, without taking out or procuring such license is guilty of a misdemeanor and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and, in addition thereto, shall be liable to a penalty of 10% of the amount of said license. This penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921; re-en. Sec. 2443, R.C.M. 1921; re-en. Sec. 2443, R.C.M. 1935; R.C.M. 1947, 84-3209.

Cross-References

Office of County Treasurer, 7-4-3002.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-21-2114. Investigation of possible licensing violations. The board of county commissioners shall investigate whether any persons are doing business in the county without a license or if the amount of a license is sufficient. In either event, the treasurer must be officially notified.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part); amd. Sec. 7, Ch. 79, L. 1983; amd. Sec. 2, Ch. 287, L. 1983; amd. Sec. 9, Ch. 179, L. 1995.

Cross-References

Board of Examiners — allocation, 2-15-1007.
County Commissioners — supervision of county and other officers, 7-4-2110.
Office of County Treasurer, 7-4-3002.

7-21-2115. Liability of county treasurer for licensing violations. Upon notification of the treasurer as provided in 7-21-2114, the treasurer is personally liable for the license or increase unless the treasurer promptly proceeds under 7-21-2104 or 7-21-2116 to collect the license fee.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part); amd. Sec. 634, Ch. 61, L. 2007.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2116. Enforcement of licensing requirements. The county shall bring suit in the name of the state of Montana as plaintiff for the recovery of the license tax or fee authorized by this part against any person required to take out a license who fails, neglects, or refuses to take out the license or who carries on or attempts to carry on business without the license. Either the county treasurer or the county attorney shall make the necessary affidavit for the writ of attachment, and the writ of attachment may be issued without any bonds being given on behalf of the plaintiff.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part); amd. Sec. 18, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in first sentence at beginning substituted "The county shall bring suit" for "The county treasurer must direct suit" and after "license tax" inserted "or fee authorized by this part"; deleted former (2) that read: "(2) In case of a recovery by the plaintiff, $15 damages must be added to the judgment and costs to be collected from the defendant"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

County Attorney — actions to recover money, 7-4-2713.
Office of County Treasurer, 7-4-3002.
Prejudgment attachment, Title 27, ch. 18.

7-21-2117. Defenses in actions related to licensing violations. Upon the trial of any action authorized by this part, the defendant is considered not to have procured the proper license unless the defendant either produces it or proves that the license was procured. However, the defendant may plead in bar of the action a recovery against and payment by the defendant in a civil action of the proper license tax, together with damages and costs.

History: En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907; re-en. Sec. 2416, R.C.M. 1921; Cal. Pol. C. Sec. 3362; re-en. Sec. 2416, R.C.M. 1935; R.C.M. 1947, 84-2705; amd. Sec. 635, Ch. 61, L. 2007.

7-21-2118 and 7-21-2119 reserved.

7-21-2120. Regulation of pawnbrokers — definition. (1) The board of county commissioners may, by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107, regulate the activities of pawnbrokers located outside the boundaries of an incorporated city or town. The regulations may include but are not limited to:

(a) standards for recordkeeping for all pawns, purchases, and sales;
(b) a provision for a waiting period to allow investigators time to examine merchandise;
(c) required forms of identification needed by persons pledging or selling articles; and
(d) penalty provisions for pawnbrokers who fail to comply with the regulations.

(2) For the purpose of this section, "pawnbroker" means a person engaged in conducting or carrying on the business of loaning money on the person's own behalf or for another, upon personal property, personal security, pawns, or pledges, or engaged in the business of purchasing articles of personal property and reselling or agreeing to resell the articles to the vendors or their assigns at prices agreed on at or before the time of purchase.

History: En. Sec. 1, Ch. 526, L. 1989; amd. Sec. 636, Ch. 61, L. 2007.

Cross-References

Authority to require records for pawnbrokers and secondhand and junk shops, 7-21-4207.
Regulation of purchases from minors by pawnbrokers and secondhand and junk shops, 7-21-4208.
Pawnbrokers, Title 31, ch. 1, part 4.

Part 22
Miscellaneous Licenses
(Repealed)

7-21-2201. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2202. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907; re-en. Sec. 2429, R.C.M. 1921; re-en. Sec. 2429, R.C.M. 1935; R.C.M. 1947, 84-3101.

7-21-2203. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2204. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2205. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2206. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2207. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2208. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2209. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2210. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2211. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917; re-en. Sec. 2435, R.C.M. 1921; amd. Sec. 5, Ch. 28, Ex. L. 1933; re-en. Sec. 2435, R.C.M. 1935; R.C.M. 1947, 84-3202; amd. Sec. 3, Ch. 249, L. 1979.

7-21-2212. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921; re-en. Sec. 2436, R.C.M. 1921; re-en. Sec. 2436, R.C.M. 1935; R.C.M. 1947, 84-3203.

7-21-2213. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907; re-en. Sec. 2442, R.C.M. 1921; re-en. Sec. 2442, R.C.M. 1935; R.C.M. 1947, 84-3208.

7-21-2214. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907; re-en. Sec. 2438, R.C.M. 1921; re-en. Sec. 2438, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1945; R.C.M. 1947, 84-3204.

7-21-2215. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R.C.M. 1921; re-en. Sec. 2440, R.C.M. 1935; amd. Sec. 43, Ch. 535, L. 1975; R.C.M. 1947, 84-3206.

7-21-2216. Repealed. Sec. 1, Ch. 161, L. 1979.

History: En. Sec. 4082, Pol. C. 1895; re-en. Sec. 2778, Rev. C. 1907; re-en. Sec. 2441, R.C.M. 1921; re-en. Sec. 2441, R.C.M. 1935; R.C.M. 1947, 84-3207.

Part 23
Licensing of Itinerant Vendors

Part Cross-References

Municipal regulation of certain activities, 7-21-4201.
Personal solicitation sales, Title 30, ch. 14, part 5.

7-21-2301. Definitions. (1) A "consumer" is one who uses and by using destroys the value of the article purchased.

(2) Within the meaning of this part, an "itinerant vendor" is any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell or exhibiting for sale (by sample, by catalogue, or otherwise) or taking orders for future delivery of any goods, wares, or merchandise or for services to be performed in the future.

History: En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; R.C.M. 1947, 84-3102(part).

7-21-2302. Scope of part. (1) This part shall in no way affect any person, firm, partnership, or corporation with a commercial rating who maintains a permanent place of business in Montana.

(2) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part, provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: (1)En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; Sec. 84-3102, R.C.M. 1947; (2), (3)En. Sec. 8, Ch. 184, L. 1925; re-en. Sec. 2429.23, R.C.M. 1935; Sec. 84-3109, R.C.M. 1947; R.C.M. 1947, 84-3102(part), 84-3109.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2303. License required to do business as itinerant vendor — fee. For the purpose of defraying the expenses of regulation under this part, an itinerant vendor desiring to do business in any county of this state shall, before commencing business, pay to the county treasurer of the county the sum of $25 for a license to conduct the itinerant business for a period of 90 days from the date the license is issued.

History: En. Sec. 2, Ch. 184, L. 1925; re-en. Sec. 2429.17, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1937; R.C.M. 1947, 84-3103; amd. Sec. 10, Ch. 7, L. 2001; amd. Sec. 19, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 increased itinerant vendor license fee from $15 to $25; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2304. Nontransferability of license. The license shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable".

History: En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).

7-21-2305. Application for itinerant vendor license. (1) An itinerant vendor desiring to do business in any county of this state shall, before commencing business, file with the county treasurer of the county, on a form to be provided by the treasurer, an application in writing, subscribed and sworn to by the applicant before an officer in this state authorized to take oaths.

(2) The application must set forth:

(a) the name of the applicant;

(b) the applicant's place of permanent residence;

(c) the applicant's local headquarters, if any;

(d) the time of the applicant's arrival in the county;

(e) the county from which the last license, if any, was received;

(f) whether the applicant is acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of the principal or employer;

(h) a brief descriptive list of articles to be offered for sale or services to be performed along with a statement of total value of anticipated sales; and

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of the agency must accompany the application as part of the application.

(4) At the time of filing the application, the itinerant vendor shall accompany the application with the sum specified in 7-21-2303 as a license fee.

History: **En. Sec. 3, Ch. 184, L. 1925; re-en. Sec. 2429.18, R.C.M. 1935; R.C.M. 1947, 84-3104; amd. Sec. 637, Ch. 61, L. 2007; amd. Sec. 20, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 in (2)(h) inserted "along with a statement of total value of anticipated sales". Amendment effective October 1, 2009.

Cross-References

Officers who may administer oaths, 1-6-101.
Office of County Treasurer, 7-4-3002.

7-21-2306. Bond required if deposit taken on orders for future delivery. (1) An application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees on the orders under the terms of 7-21-2301 through 7-21-2305 must be accompanied by a bond equal to 125% of the value stated in the vendor's application, as provided in 7-21-2305, and must be payable to the county treasurer.

(2) (a) The bond must be executed by a surety company licensed to do business in this state.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond, irrevocable letter of credit, or other acceptable form of security of an equal amount.

(3) The bond or security must be approved by the county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of the order or, failing delivery, that the money advanced by the customers will be refunded.

(4) The bond or security must remain in full force and effect for a period of 6 months after the expiration of a license and must be held to ensure only business transacted under the authority of the license issued pursuant to the application that the bond accompanied.

History: **En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part); amd. Sec. 14, Ch. 220, L. 1985; amd. Sec. 638, Ch. 61, L. 2007; amd. Sec. 21, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 in (1) near end substituted "a bond equal to 125% of the value stated in the vendor's application, as provided in 7-21-2305, and must be" for "a bond in the sum of $250"; in (2)(a) after "state" deleted "or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of the county"; in (2)(b) after "cash bond" inserted "irrevocable letter of credit, or other acceptable form of security"; in (3) and (4) near beginning after "bond" inserted "or security"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Office of County Treasurer, 7-4-3002.
Guaranty — general provisions, Title 28, ch. 11, part 1.
Suretyship, Title 28, ch. 11, part 4.

7-21-2307. Right of aggrieved purchaser. A person aggrieved by the action or misrepresentation of an itinerant vendor has a right of action on the bond for the recovery of the person's money advanced or damages and costs.

History: **En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part); amd. Sec. 639, Ch. 61, L. 2007.**

7-21-2308. Processing of application — issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of the application and the bond or security prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in the application in the county in which the license is issued for a period of 90 days from the date of the license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file the application with the county clerk and recorder of that county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found.

History: **En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part); amd. Sec. 640, Ch. 61, L. 2007; amd. Sec. 22, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 in (1) near beginning after "bond" inserted "or security". Amendment effective October 1, 2009.

Cross-References

Role and duties of County Clerk, 7-4-2611.
Office of County Treasurer, 7-4-3002.

7-21-2309. License to be displayed upon demand. (1) An itinerant vendor doing business under the provisions of this part shall upon the demand of any person exhibit the vendor's license and permit the license to be read at the time by the person making the demand.

(2) An itinerant vendor who willfully refuses or fails to exhibit the license as provided in subsection (1) is guilty of a misdemeanor and shall be fined not less than $100 or more than $250 for each offense.

History: En. Sec. 6, Ch. 184, L. 1925; re-en. Sec. 2429.21, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1937; R.C.M. 1947, 84-3107; amd. Sec. 641, Ch. 61, L. 2007.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

7-21-2310. Effect of failure to comply with licensing requirements. Every itinerant vendor, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 184, L. 1925; re-en. Sec. 2429.22, R.C.M. 1935; R.C.M. 1947, 84-3108.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

Part 24
Licensing of Transient Retail Merchants

Part Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2401. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Temporary premises" means a hotel, roominghouse, storeroom, building or part of a building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place that is temporarily occupied by a transient retail merchant.

(2) "Transient retail merchant" means a person, firm, or corporation that, acting on its own behalf or representing any other person, firm, or corporation, brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and that solicits, sells, offers to sell, or exhibits for sale the stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part); amd. Sec. 4, Ch. 249, L. 1979; amd. Sec. 642, Ch. 61, L. 2007.

7-21-2402. Applicability of term transient retail merchant. The definition of transient retail merchant shall continue to apply until such person, firm, or corporation shall be continuously engaged at such particular place in the county for a period of 1 year.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part).

7-21-2403. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) The provisions of this part shall not apply to duly constituted city markets operated by authority of any city or town.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: En. Sec. 8, Ch. 182, L. 1925; re-en. Sec. 2429.8, R.C.M. 1935; R.C.M. 1947, 84-3708.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2404. License required to do business as transient retail merchant — fee. For the purpose of defraying the expenses of regulation under this part, a transient retail merchant desiring to do business in any county of this state shall, before commencing business, pay in advance the sum of $25 for each week or fraction of a week to the county treasurer of the county in which the business is conducted.

History: En. Sec. 2, Ch. 182, L. 1925; re-en. Sec. 2429.2, R.C.M. 1935; R.C.M. 1947, 84-3702; amd. Sec. 23, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 at beginning substituted "For the purpose of defraying the expense of regulation under this part, a transient retail merchant desiring to do business in any county of this state shall, before commencing business, pay in advance the sum of $25" for "The amount to be paid for the license to conduct the business of a transient retail merchant shall be the sum of $5"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2405. Nontransferability of license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable".

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).

7-21-2406. Application for transient retail merchant license. (1) A transient retail merchant desiring to do business in any county of this state shall, before commencing business, file with the county treasurer of the county, on a form to be provided by the treasurer, an application in writing, subscribed and sworn to by the applicant before an officer in this state authorized to take oaths.

(2) The application must set forth:

(a) the name of the applicant;

(b) the applicant's place of permanent residence;

(c) the applicant's local headquarters, if any;

(d) the time of the applicant's arrival in the county;

(e) the county from which the last license, if any, was received;

(f) whether the applicant is acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of the applicant's principal or employer;

(h) a brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery; and

(j) the number of weeks for which the license is requested.

(3) If the applicant is acting as an agent, the principal's acknowledgment of the agency must accompany the application as part of the application.

(4) At the time of filing the application, the transient retail merchant shall accompany the application with the sum specified in 7-21-2404 as a license fee, except as provided in 7-21-2407.

History: En. Sec. 3, Ch. 182, L. 1925; re-en. Sec. 2429.3, R.C.M. 1935; R.C.M. 1947, 84-3703; amd. Sec. 643, Ch. 61, L. 2007.

Cross-References

Officers who may administer oaths, 1-6-101.
Office of County Treasurer, 7-4-3002.
Agency, Title 28, ch. 10.

7-21-2407. Bond or security in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond or security provided for in this section, receive from the county treasurer a license permitting the conduct of the business for a period of 1 year.

(2) The bond must be a surety bond in the sum of $1,000 to the county treasurer.

(3) (a) The bond must be executed by a surety company licensed to do business in this state.

(b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond or security may be a cash bond, irrevocable letter of credit, or other acceptable form of security of an equal amount.

(4) The bond or security must be approved by the county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to ensure the payment of license fees for the period the business is actually conducted if the business is not in fact a bona fide permanent business. The bond or security must be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of the order or sale.

(5) The bond or security must remain in full force and effect for a period of 6 months after the expiration of the 1-year period.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part); amd. Sec. 15, Ch. 220, L. 1985; amd. Sec. 24, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) near end after "bond" inserted "or security"; in (3)(a) after "state" deleted "or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county"; in (3)(b) after "the bond" inserted "or security" and after "cash bond" inserted "irrevocable letter of credit, or other acceptable form of security"; in (4) in first and second sentences and in (5) near beginning after "bond" inserted "or security"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Office of County Treasurer, 7-4-3002.
Guaranty — general provisions, Title 28, ch. 11, part 1.
Suretyship, Title 28, ch. 11, part 4.

7-21-2408. Right of aggrieved purchaser. A person aggrieved by any action or misrepresentation of a transient retail merchant has a right of action on the bond or security provided for in 7-21-2407 for the recovery of money advanced or damages and costs.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part); amd. Sec. 644, Ch. 61, L. 2007; amd. Sec. 25, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 after "bond" inserted "or security". Amendment effective October 1, 2009.

Cross-References

When guarantor of performance or payment becomes liable, 28-11-205.
Extent of surety's liability, 28-11-411.

7-21-2409. Processing of application — issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in the application in the county in which the license is issued for the period for which the license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond or security prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in the application in the county in which the license is issued for a period of 1 year from the date of the license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration of the license and shall immediately file the application with the county clerk and recorder of the county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found.

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part); amd. Sec. 645, Ch. 61, L. 2007; amd. Sec. 26, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1)(b) after "bond" inserted "or security". Amendment effective October 1, 2009.

Cross-References

Role and duties of County Clerk, 7-4-2611.
Office of County Treasurer, 7-4-3002.

7-21-2410. License to be displayed in place of business. (1) A transient retail merchant doing business under the provisions of this part shall at all times keep the license conspicuously posted in the place of business.

(2) A transient retail merchant who fails to post and keep posted the license as provided in subsection (1) is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 for each offense.

History: En. Sec. 6, Ch. 182, L. 1925; re-en. Sec. 2429.6, R.C.M. 1935; R.C.M. 1947, 84-3706; amd. Sec. 646, Ch. 61, L. 2007; amd. Sec. 27, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (2) after "misdemeanor" substituted "and upon conviction shall be fined not less than $100 or more than $500" for "and shall be fined not less than $10 or more than $25". Amendment effective October 1, 2009.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

7-21-2411. Effect of failure to comply with licensing requirements. Every transient retail merchant, as herein defined, doing business without first obtaining a license so required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 182, L. 1925; re-en. Sec. 2429.7, R.C.M. 1935; R.C.M. 1947, 84-3707.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

Part 25
Licensing of Hucksters

Part Cross-References

Municipal regulation of certain activities, 7-21-4201.
Personal solicitation sales, Title 30, ch. 14, part 5.

7-21-2501. Definition of term huckster. Within the meaning of this part, any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house is a huckster.

History: En. Sec. 1, Ch. 183, L. 1925; re-en. Sec. 2429.9, R.C.M. 1935; R.C.M. 1947, 84-2901.

Cross-References

Personal solicitation defined, 30-14-502.

7-21-2502. Scope of part. (1) This part is not intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) This part may not be construed so as in any manner to impair, abridge, or interfere with the right of a grower or producer of farm products to dispose of products grown or produced by the person.

History: En. Sec. 7, Ch. 183, L. 1925; re-en. Sec. 2429.15, R.C.M. 1935; R.C.M. 1947, 84-2907; amd. Sec. 647, Ch. 61, L. 2007.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2503. License required to do business as huckster — fee. A huckster desiring to do business in any county of this state shall, before commencing business, pay to the county treasurer of the county the sum of $25 for a license to conduct the business for a period of 6 months from the date the license is issued.

History: En. Sec. 2, Ch. 183, L. 1925; re-en. Sec. 2429.10, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1937; R.C.M. 1947, 84-2902; amd. Sec. 28, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 increased license fee from $15 to $25; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2504. Nontransferability of license. The license required by 7-21-2503 shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable".

History: En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).

7-21-2505. Application for huckster license. (1) A huckster desiring to do business in any county of this state shall, before commencing business, file with the county treasurer of the county, on a form to be provided by the treasurer, an application in writing.

(2) The application must set forth:

(a) the name of the applicant;

(b) the applicant's place of permanent residence;

(c) whether the applicant is acting as principal, agent, or employee; and

(d) if acting as agent or employee, the name and place of business of the principal or employer.

(3) At the time of filing the application, the huckster shall accompany the application with the sum specified in 7-21-2503 as a license fee.

History: En. Sec. 3, Ch. 183, L. 1925; re-en. Sec. 2429.11, R.C.M. 1935; R.C.M. 1947, 84-2903; amd. Sec. 648, Ch. 61, L. 2007.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2506. Processing of application — issuance of license. (1) Upon filing of the application specified in 7-21-2505 and upon the payment to the county treasurer of the sum specified in 7-21-2503, the county treasurer shall issue and deliver to the applicant a license to carry on the business of a huckster for a period of 6 months from the date of the license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file the application with the county clerk and recorder of the county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found.

History: En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part); amd. Sec. 649, Ch. 61, L. 2007.

Cross-References

Role and duties of County Clerk, 7-4-2611.
Office of County Treasurer, 7-4-3002.

7-21-2507. License to be displayed upon demand. (1) A huckster doing business under the provisions of this part shall, upon demand of any interested person, exhibit the huckster's license and permit the license to be read at that time by the person making the demand.

(2) A huckster who refuses or fails to exhibit the license as provided in subsection (1) is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500.

History: En. Sec. 5, Ch. 183, L. 1925; re-en. Sec. 2429.13, R.C.M. 1935; R.C.M. 1947, 84-2905; amd. Sec. 650, Ch. 61, L. 2007; amd. Sec. 29, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (2) after "misdemeanor" substituted "and upon conviction shall be fined not less than $100 or more than $500" for "and shall be fined not less than $10 or more than $25"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

7-21-2508. Effect of failure to comply with licensing requirements. Every huckster, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly, as provided in 46-18-212.

History: En. Sec. 6, Ch. 183, L. 1925; re-en. Sec. 2429.14, R.C.M. 1935; R.C.M. 1947, 84-2906.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

Part 26
Licensing of Public Dances and Dancehalls (Repealed)

7-21-2601. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 1, Ch. 131, L. 1929; re-en. Sec. 2815.1, R.C.M. 1935; R.C.M. 1947, 16-1166.

7-21-2602. Repealed. Sec. 1, Ch. 533, L. 1989.

History: En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2603. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2604. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2605. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2606. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2607. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2608. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 7, Ch. 131, L. 1929; re-en. Sec. 2815.7, R.C.M. 1935; R.C.M. 1947, 16-1172.

7-21-2609. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2610. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2611. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2612. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2613. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2614. Repealed. Sec. 1, Ch. 533, L. 1989.
History: (1)En. Sec. 8, Ch. 131, L. 1929; re-en. Sec. 2815.8, R.C.M. 1935; Sec. 16-1173, R.C.M. 1947; (2)En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; Sec. 16-1170, R.C.M. 1947; R.C.M. 1947, 16-1170(part), 16-1173.

7-21-2615. Repealed. Sec. 1, Ch. 533, L. 1989.
History: En. Sec. 9, Ch. 131, L. 1929; re-en. Sec. 2815.9, R.C.M. 1935; R.C.M. 1947, 16-1174.

Parts 27 through 30 reserved

Part 31
Public Scales

Part Cross-References
Weights, measures, standards, and labeling, Title 30, ch. 12.

7-21-3101. Establishment of public scales. When petitioned by 25 or more resident landowners of the county, the board of county commissioners of any county may establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905; re-en. Sec. 2899, Rev. C. 1907; re-en. Sec. 4471, R.C.M. 1921; re-en. Sec. 4471, R.C.M. 1935; R.C.M. 1947, 16-1108; amd. Sec. 30, Ch. 291, L. 2009.

Compiler's Comments
2009 Amendment: Chapter 291 near beginning after "25 or more" substituted "resident landowners" for "residents and freeholders"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References
General authority of County Commissioners, 7-5-2101.
Licensing of weighing devices, 30-12-203.

7-21-3102. Ownership of public scales. Such scales shall be purchased by the county, shall be the property of the county, and at all times shall be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

Cross-References
General authority of County Commissioners, 7-5-2101.
Authorization for county to obtain property, 7-8-2201.

7-21-3103. Capacity and design of public scales. Such scales shall be of not less than 5 tons' weighing capacity and shall be provided with glass or open front which can be observed by the one weighing without dismounting from wagon.

History: **En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).**

7-21-3104. Appointment of public weigher. (1) The board of county commissioners shall appoint, at each place where public scales are established by them, a public weigher who has the custody and care of the property.

(2) A public weigher must be governed by rules that may be from time to time prescribed or adopted by the board, and the weigher may be removed at any time by the board.

History: **(1)En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; Sec. 16-1110, R.C.M. 1947; (2)En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; Sec. 16-1112, R.C.M. 1947; R.C.M. 1947, 16-1110(part), 16-1112(part); amd. Sec. 651, Ch. 61, L. 2007.**

Cross-References

General authority of County Commissioners, 7-5-2101.
County Commissioners — promulgation and enforcement of rules, 7-5-2102.
Employment of personnel by County Commissioners, 7-5-2107.

7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 who is not a county employee shall give a bond to the county in the sum of $500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to the weigher's trust in office.

History: **En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; R.C.M. 1947, 16-1110(part); amd. Sec. 652, Ch. 61, L. 2007; amd. Sec. 31, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 after "7-21-3104" inserted "who is not a county employee". Amendment effective October 1, 2009.

Cross-References

Official bonds of county officers, 7-4-2212.

7-21-3106. Record of weighing. (1) Each public weigher shall keep a stub record of all weighing done by that weigher. The record and the receipt issued by the public weigher must show for whom property was weighed and the character and kind of property and is prima facie evidence of the facts contained in the record and receipt.

(2) All stub records or other records that the county commissioners may require the public weigher to keep must at all times be open to public inspection during business hours, between 7 a.m. and 6 p.m. of any day, except Sundays and legal holidays.

(3) A public weigher shall file a sworn statement with the clerk and recorder of the county, as prescribed by the county commissioners. The statement must show the date and character or kind of property weighed, for whom it was weighed, and a complete statement of all fees collected.

History: **En. Sec. 4, Ch. 22, L. 1905; re-en. Sec. 2902, Rev. C. 1907; re-en. Sec. 4474, R.C.M. 1921; re-en. Sec. 4474, R.C.M. 1935; R.C.M. 1947, 16-1111; amd. Sec. 653, Ch. 61, L. 2007.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Citizens entitled to inspect and copy public writings, 2-6-102.

7-21-3107. Fee for weighing. (1) A public weigher who is not a county employee may not receive more than $10 for each receipt issued.

(2) A county that operates a public scale, after a public hearing and after providing notice of the hearing under 7-1-2121, may adopt a fee schedule for weighing.

History: **En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; R.C.M. 1947, 16-1112(part); amd. Sec. 654, Ch. 61, L. 2007; amd. Sec. 32, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 in (1) after "weigher" inserted "who is not a county employee" and increased amount for each receipt issued from 10 cents to $10; inserted (2) authorizing county to adopt fee schedule for weighing; and made minor changes in style. Amendment effective October 1, 2009.

7-21-3108. Misconduct by public weigher. A public weigher under the provisions of this part who makes any false or fraudulent receipt of any weighing or who conspires with any other person for the purpose of deceiving any person with regard to the correctness of weights or who fails to comply with the requirements of 7-21-3104(2) or 7-21-3107 is, upon conviction, guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905; re-en. Sec. 2904, Rev. C. 1907; re-en. Sec. 4476, R.C.M. 1921; re-en. Sec. 4476, R.C.M. 1935; R.C.M. 1947, 16-1113; amd. Sec. 655, Ch. 61, L. 2007.

Cross-References

What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Deceptive business practices, 45-6-318.
False swearing, 45-7-202.
Official misconduct, 45-7-401.
Misdemeanor — no penalty specified, 46-18-212.

Part 32
County Agricultural and Livestock Services

Part Cross-References

Agriculture, Title 80.
Livestock, Title 81.

7-21-3201. Authorization to appropriate money for promotion of county products. (1) The board of county commissioners of any county may appropriate money from the general fund of the county for advertising the agricultural resources of the county through the department of agriculture or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state.

(2) Said money shall be expended in such manner as the board may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits herein indicated.

History: (1)En. Sec. 1, Ch. 107, L. 1927; re-en. Sec. 4470.1, R.C.M. 1935; amd. Sec. 116, Ch. 218, L. 1974; Sec. 16-1105, R.C.M. 1947; (2)En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; Sec. 16-1106, R.C.M. 1947; R.C.M. 1947, 16-1105, 16-1106(part).

Cross-References

Duties of Department of Agriculture, 80-1-102.

7-21-3202. Repealed. Sec. 37, Ch. 291, L. 2009.

History: En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; R.C.M. 1947, 16-1106(part).

7-21-3203. Support of extension work in agriculture and home economics. (1) The county commissioners of any county may appropriate money from the general funds of the county treasury or from funds provided by a levy for the purpose of carrying on extension work in agriculture and home economics within the county in cooperation with Montana state university-Bozeman and the United States department of agriculture. Subject to 15-10-420, the county commissioners may impose the levy for the purpose of this section at the same time as other levies for county purposes are imposed.

(2) The amount of an appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents and the compensation and conditions of service of agents must be covered in memoranda of agreement between the county commissioners and Montana state university-Bozeman.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919; re-en. Sec. 4487, R.C.M. 1921; re-en. Sec. 4487, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1949; R.C.M. 1947, 16-1130; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 60, Ch. 584, L. 1999; amd. Sec. 69, Ch. 574, L. 2001.

Cross-References

General authority of County Commissioners, 7-5-2101.
Authorization for county mill levy, 7-6-2501.
Montana State University-Bozeman — designation and purpose, 20-25-221.

7-21-3204 through 7-21-3210 reserved.

7-21-3211. Employment of stock inspector. (1) Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in the county and in a manner that the public officers of the county are not in a position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector.

(2) Whenever a stock inspector is employed, the employment is only for the case or cases then under investigation. During the existence of the appointment, the inspector is vested with the same police power and authority as the sheriff, within the limitation of the purposes for which the inspector is appointed.

History: En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part); amd. Sec. 656, Ch. 61, L. 2007.

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

Department of Livestock — marks and brands, Title 81, ch. 3.

7-21-3212. Compensation of stock inspector. (1) Whenever a stock inspector is employed, the inspector's compensation must be at a rate commensurate with the rate paid to an entry-level deputy sheriff of the county, including necessary expenses for the time actually engaged in the work, and the inspector must be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of the crime, the inspector is not entitled to any part of the reward.

History: En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part); amd. Sec. 657, Ch. 61, L. 2007; amd. Sec. 33, Ch. 291, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 291 in (1) after "rate" substituted "commensurate with the rate paid to an entry-level deputy sheriff of the county, including necessary expenses" for "not to exceed the sum of $7.50 a day and necessary expenses". Amendment effective October 1, 2009.

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

Details related to county warrants, 7-6-2601.

7-21-3213. Repealed. Sec. 37, Ch. 291, L. 2009.

History: En. Sec. 3, Ch. 61, L. 1909; re-en. Sec. 4485, R.C.M. 1921; re-en. Sec. 4485, R.C.M. 1935; R.C.M. 1947, 16-1125; amd. Sec. 658, Ch. 61, L. 2007.

Part 33

Public Markets

7-21-3301. Establishment of markets and market houses. In addition to the powers specifically granted by the laws of the state and such other limitations and exceptions contained in the existing statutes of the state in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in Montana shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets, and to acquire the property necessary therefor.

History: En. Sec. 1, Ch. 28, L. 1917; re-en. Sec. 4488, R.C.M. 1921; re-en. Sec. 4488, R.C.M. 1935; R.C.M. 1947, 16-1136.

7-21-3302. Acquisition of property for establishment and maintenance of public markets. The boards of county commissioners within Montana may acquire by purchase, lease, construction, or otherwise suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties.

History: En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).

Cross-References

Authorization for county to obtain property, 7-8-2201.

7-21-3303. Opening of public market. A board of county commissioners availing themselves of the provisions of this part shall, as soon as the necessary lands and premises have been acquired, cause to be opened and maintained at the county seat and in the quarters acquired an open public market for the benefit of the farmers, gardeners, and actual producers of farm products. The market is for the sale by the producers directly to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption.

History: En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part); amd. Sec. 659, Ch. 61, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-21-3304. Days of operation of market. All county markets established under the provisions of this part shall be open to the public not less than 2 days in each week.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).

7-21-3305. Notice of rules and days of operation. The rules adopted for the government of the county market, together with a notice of the market days in each week, must be published as provided in 7-1-2121 by the county commissioners once in each year prior to the opening of the market.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part); amd. Sec. 58, Ch. 354, L. 2001.

Cross-References

Promulgation and enforcement of rules, 7-5-2102.

County printing contract, 18-7-411.

7-21-3306. Payment of expenses incurred in connection with public market. The expense of the establishment and maintenance of the markets provided for in this part shall be paid by the boards of county commissioners from the general funds of the counties, except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this part.

History: En. Sec. 6, Ch. 28, L. 1917; re-en. Sec. 4493, R.C.M. 1921; re-en. Sec. 4493, R.C.M. 1935; R.C.M. 1947, 16-1141.

Cross-References

Details related to county warrants, 7-6-2601.

7-21-3307. Gross proceeds charge. (1) A producer of products using the marketplace established under the provisions of this part shall pay or cause to be paid, at the close of each day's business, to the market master a charge of 5% of the person's gross sales.

(2) The funds collected by the market master must be turned in to the county treasury to the credit of the county market fund and must be used by the county treasurer toward the payment of the expenses of operating and maintaining the public market.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part); amd. Sec. 660, Ch. 61, L. 2007.

Cross-References

Duties of County Treasurer, 7-6-2111.

7-21-3308. Effect of failure to pay gross proceeds charge. Every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market master of the county market of any county of this state 5% of the gross sales made by them within such market shall be guilty of a misdemeanor and upon the conviction thereof shall be fined not less than $10 or more then $100 and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privileges afforded by the county markets established at the county seats of every county in Montana.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

7-21-3309. Speculative or resale purchases prohibited. No rules adopted for the government of any market established under this part shall permit any person, firm, or corporation to purchase the products displayed and offered for sale for the purpose of speculating thereon by again offering the same for sale within such public marketplace. The privileges of the markets established under the provisions of this part shall be extended only to the actual producers of the products offered for sale.

History: En. Sec. 7, Ch. 28, L. 1917; re-en. Sec. 4494, R.C.M. 1921; re-en. Sec. 4494, R.C.M. 1935; R.C.M. 1947, 16-1142.

Cross-References

Promulgation and enforcement of rules, 7-5-2102.

7-21-3310 through 7-21-3320 reserved.

7-21-3321. Market master. In each of the counties of this state wherein the office of county auditor exists, the county auditor shall be ex officio the county market master. In all other counties which may avail themselves of the provisions of this part wherein no office of county auditor is maintained, the county clerk of such county shall be ex officio market master.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).

Cross-References

Role and duties of County Clerk, 7-4-2611.

Office of County Auditor, 7-4-3003.

7-21-3322. Role of market master. (1) A county market master shall, under the supervision and approval of the board of county commissioners, make all necessary rules for the establishment, maintenance, operation, and control of the markets established under this part in the respective counties of the state.

(2) The county market master shall:

(a) cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition;

(b) arrange for stalls and spaces in a manner that best suits the convenience of both buyers and sellers;

(c) see that the laws of Montana relating to weights and measures are enforced and observed;

(d) cause order to be preserved during the time the market is open and in operation;

(e) prevent and remove obstructions from the marketplace or grounds;

(f) prevent disorderly conduct and prevent disorderly persons from remaining in market buildings, space, or grounds during the market hours;

(g) cause all offenses against the laws of Montana concerning the inspection of foods or the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, vegetables, or provisions of any kind to be prosecuted;

(h) designate proper means of supervising and accounting for the sales made and collecting the commissions provided for in this part; and

(i) generally supervise and control the operations of the public markets established under the provisions of this part.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part); amd. Sec. 2, Ch. 561, L. 2003.

Cross-References

Promulgation and enforcement of rules, 7-5-2102.

Employment of personnel by County Commissioners, 7-5-2107.

Part 34
County Fairs

7-21-3401. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part); amd. Sec. 5, Ch. 249, L. 1979; amd. Sec. 4, Ch. 681, L. 1991; amd. Sec. 15, Ch. 543, L. 1995.

7-21-3402. Repealed. Sec. 8, Ch. 681, L. 1991.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part).

7-21-3403. Repealed. Sec. 25, Ch. 543, L. 1995.

History: (1)En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935;

re-en. Sec. 4545, R.C.M. 1935; Sec. 16-1401, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; Sec. 16-1402, R.C.M. 1947; R.C.M. 1947, 16-1401(part), 16-1402(part); amd. Sec. 1, Ch. 342, L. 1983.

7-21-3404. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; R.C.M. 1947, 16-1404(part).

7-21-3405. Repealed. Sec. 25, Ch. 543, L. 1995.

History: Ap. p. Sec. 3, Ch. 67, L. 1903; re-en. Sec. 2929, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1917; re-en. Sec. 4548, R.C.M. 1921; re-en. Sec. 4548, R.C.M. 1935; Sec. 16-1405, R.C.M. 1947; Ap. p. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; Sec. 16-1404, R.C.M. 1947; R.C.M. 1947, 16-1404(part), 16-1405; amd. Sec. 6, Ch. 249, L. 1979.

7-21-3406. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; R.C.M. 1947, 16-1402(part); amd. Sec. 9, Ch. 553, L. 1989; amd. Sec. 16, Ch. 543, L. 1995; amd. Sec. 4, Ch. 35, L. 2003.

7-21-3407. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 67, L. 1903; re-en. Sec. 2930, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4546, R.C.M. 1921; re-en. Sec. 4546, R.C.M. 1935; R.C.M. 1947, 16-1403; amd. Sec. 10, Ch. 553, L. 1989.

7-21-3408. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part); amd. Sec. 2, Ch. 342, L. 1983.

7-21-3409. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1) thru (3), (5)En. Sec. 1, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.3, R.C.M. 1935; Sec. 16-1154, R.C.M. 1947; (4)En. Sec. 2, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.4, R.C.M. 1935; Sec. 16-1155, R.C.M. 1947; R.C.M. 1947, 16-1154, 16-1155; amd. Sec. 3, Ch. 342, L. 1983; amd. Sec. 11, Ch. 553, L. 1989.

7-21-3410. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1), (2)En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; Sec. 16-1406, R.C.M. 1947; (3)En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; Sec. 16-1407, R.C.M. 1947; R.C.M. 1947, 16-1406(part), 16-1407(part); amd. Sec. 61, Ch. 584, L. 1999; amd. Sec. 13, Ch. 453, L. 2005.

7-21-3411. Restriction on use of appropriation or tax money. An amount of the appropriation or tax levy or assessment for a county fair district or a multiple county fair district may not be expended for horseracing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; R.C.M. 1947, 16-1406(part); amd. Sec. 33, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 near middle after "levy" substituted "or assessment for a county fair district or a multiple county fair district" for "provided for in 7-21-3410"; and made minor changes in style. Amendment effective July 1, 2009.

7-21-3412. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part).

7-21-3413. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. 16-1407.1 by Sec. 2, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.1; amd. Sec. 5, Ch. 35, L. 2003.

7-21-3414. Repealed. Sec. 7, Ch. 35, L. 2003.

History: En. 16-1407.2 by Sec. 3, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.2; amd. Sec. 4, Ch. 342, L. 1983.

7-21-3415 through 7-21-3420 reserved.

7-21-3421. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 7, Ch. 249, L. 1979.

7-21-3422. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 8, Ch. 249, L. 1979; amd. Sec. 29, Ch. 349, L. 1985.

7-21-3423. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 9, Ch. 249, L. 1979.

7-21-3424. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 7, Ch. 178, L. 1931; re-en. Sec. 4550.7, R.C.M. 1935; R.C.M. 1947, 16-1414.

7-21-3425. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 178, L. 1931; re-en. Sec. 4550.2, R.C.M. 1935; R.C.M. 1947, 16-1409; amd. Sec. 10, Ch. 249, L. 1979; amd. Sec. 5, Ch. 342, L. 1983.

7-21-3426. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Secs. 3, 4, Ch. 178, L. 1931; re-en. Secs. 4550.3, 4550.4, R.C.M. 1935; R.C.M. 1947, 16-1410(part), 16-1411(part); amd. Sec. 11, Ch. 249, L. 1979; amd. Sec. 5, Ch. 216, L. 1995.

7-21-3427. Repealed. Sec. 39, Ch. 286, L. 2009.

History: Ap. p. Sec. 3, Ch. 178, L. 1931; re-en. Sec. 4550.3, R.C.M. 1935; Sec. 16-1410, R.C.M. 1947; Ap. p. Sec. 4, Ch. 178, L. 1931; re-en. Sec. 4550.4, R.C.M. 1935; Sec. 16-1411, R.C.M. 1947; R.C.M. 1947, 16-1410(part), 16-1411(part).

7-21-3428. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 6, Ch. 178, L. 1931; re-en. Sec. 4550.6, R.C.M. 1935; R.C.M. 1947, 16-1413.

7-21-3429. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3430. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3431. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3432. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part); amd. Sec. 62, Ch. 584, L. 1999.

7-21-3433. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part); amd. Sec. 63, Ch. 584, L. 1999; amd. Sec. 70, Ch. 574, L. 2001.

7-21-3434. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3435. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part); amd. Sec. 661, Ch. 61, L. 2007.

7-21-3436 through 7-21-3450 reserved.

7-21-3451. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 553, L. 1989.

7-21-3452. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 553, L. 1989; amd. Sec. 6, Ch. 216, L. 1995.

7-21-3453. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 3, Ch. 553, L. 1989; amd. Sec. 662, Ch. 61, L. 2007.

7-21-3454. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 553, L. 1989.

7-21-3455. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 553, L. 1989.

7-21-3456. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 6, Ch. 553, L. 1989.

7-21-3457. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 7, Ch. 553, L. 1989; amd. Sec. 71, Ch. 574, L. 2001.

7-21-3458. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 8, Ch. 553, L. 1989.

Parts 35 and 36 reserved

Part 37
Empowerment Zones

7-21-3701. Purpose of empowerment zone. An empowerment zone is intended to be a tool of economic development that encourages the establishment of businesses in designated areas, which can cause the emergence of industry clusters. Businesses are encouraged to locate in empowerment zones through income tax credits and insurance premium tax credits based upon the number of jobs that the employer has created in the empowerment zone.

History: En. Sec. 1, Ch. 582, L. 2003.

7-21-3702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of labor and industry.

(2) "Governing body" means the board of county commissioners of a county and the governing body of a consolidated local government or municipality.

History: En. Sec. 2, Ch. 582, L. 2003.

7-21-3703. Empowerment zones — creation. (1) The governing body of a county, a consolidated local government, or a municipality or jointly the governing bodies of counties, consolidated local governments, and municipalities may create empowerment zones. The empowerment zone may consist of all or a part of a county, consolidated local government, or municipality. If a proposed empowerment zone consists of an area partly within and partly outside of the limits of a municipality, the zone must be established by both the county and municipal governing bodies acting jointly, meeting together but voting separately.

(2) A governing body may adopt a resolution of intention to create an empowerment zone. The resolution must identify the limits of the zone and make findings that the proposed zone meets the qualifying criteria set forth in 7-21-3704. The governing body shall hold a public hearing on the question of whether to establish an empowerment zone. The hearing may be set no sooner than 3 weeks or later than 90 days from the date of the adoption of the resolution. Notice of the hearing must be published twice, 1 week apart not later than 1 week prior to the date set for the hearing. The notice must provide the subject, date, time, and place of the hearing and must identify the proposed empowerment zone boundaries.

(3) The hearing may be adjourned from time to time to seek additional information or to hear additional proponents or opponents. After the hearing, the governing body may, by resolution, create an empowerment zone.

(4) Each governing body may create a maximum of one empowerment zone, either wholly or partially within its limits, in any 7-year period.

History: En. Sec. 3, Ch. 582, L. 2003.

7-21-3704. Criteria for empowerment zone. An empowerment zone may be established if it meets the following requirements:

(1) the average unemployment or the poverty rate in the area or an area within a reasonable proximity of the area in the preceding 2 years, as determined by the department, was at least 150% of the average annual statewide unemployment or poverty rate for the same period;

(2) the geographical area must be contiguous, must be within one county, and unless it consists totally of undeveloped land, may not consist of less than one-fourth square mile; and

(3) the boundaries must be based on historic community or neighborhood identity and the empowerment zone must include an area in which there is an annual average population of at least 1,000 residents. Boundaries may also be based on boundaries of United States census geographical units, political subdivisions, Indian reservations, and school districts.

(4) The governing body has the burden of establishing that the proposed empowerment zone meets the requirements of this section.

History: En. Sec. 4, Ch. 582, L. 2003.

7-21-3705 through 7-21-3709 reserved.

7-21-3710. Tax credits for employers in empowerment zone. (1) There is allowed to an employer a credit against taxes imposed under 15-30-2103, 15-31-121, 15-31-122, or 33-2-705 for an increase in net employees as provided in this section.

(2) To be eligible for a credit under this section, the owner of a business located in an empowerment zone:

(a) shall conduct a business in a facility within the empowerment zone in which retail sales of tangible personal property, other than that manufactured in the business facility, are not in excess of 10% of the business conducted in the facility, whether measured by number of employees doing retail sales, by square footage, or by dollar volume; and

(b) shall increase employment in the empowerment zone with employees:

(i) who are employed for at least 1,750 hours a year in permanent employment intended to last at least 3 years;

(ii) who were not employed by the business in the preceding 12 months;

(iii) at least 35% of whom were residents of the county in which the empowerment zone is located at the time they were hired by the business;

(iv) who are provided a health benefit plan for employees in accordance with 33-22-1811(3)(d) of which at least 50% of the premium is paid by the business; and

(v) who are paid for job duties performed at the empowerment zone location of the business.

(3) (a) For the purposes of subsection (2)(b)(i), an employee hired in the last 90 days of a year is considered to be an employee beginning employment in the following year. If an employee terminates employment, a replacement employee may be hired and the credit for the combined length of time may be claimed.

(b) For the purposes of subsection (2)(b)(iii), if an employee for whom a credit was claimed and who counted as an empowerment zone county resident for credit eligibility in either of the immediate 2 preceding years terminates employment, the replacement employee must have been a resident of the county in which the empowerment zone is located at the time the replacement employee is hired.

(4) An employer shall apply for certification to claim a credit under the provisions of this section. The department shall require a report that contains detailed information to determine whether an employer qualifies under subsections (2) and (3). The information must be detailed enough for auditing purposes. The department is authorized to inspect employers applying for certification or who have obtained certification.

(5) The department shall certify to the department of revenue or the state auditor's office, as applicable, whether a business may claim a credit under the provisions of this section as well as how many additional employees qualify and the year of initial employment of qualifying employees.

History: En. Sec. 5, Ch. 582, L. 2003.

7-21-3711 through 7-21-3714 reserved.

7-21-3715. Rulemaking authority. The department may adopt rules to implement this part.

History: En. Sec. 9, Ch. 582, L. 2003.

Parts 38 through 40 reserved

Part 41
Municipal Licensing Authority

Part Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

7-21-4101. General licensing power of municipalities. (1) The city or town council has power:

(a) to license by ordinance all industries, pursuits, professions, and occupations and to impose penalties for failure to comply with such license requirements;

(b) to fix the amount, terms, and manner of issuing and revoking licenses.

(2) The council may refuse to issue licenses when it may deem it best for the public interests.

History: Ap. p. Subds. 3, 4, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.2, 5039.3, R.C.M. 1935; Secs. 11-903, 11-904, R.C.M. 1947; Ap. p. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; Sec. 84-4737, R.C.M. 1947; R.C.M. 1947, 11-903, 11-904, 84-4737(part).

Cross-References

General powers of Municipal Council, 7-5-4101.
Municipal ordinances, 7-5-4201.
General licensing power of counties, 7-21-2101.

7-21-4102. Collection of license fees. The city treasurer must collect the license fees authorized by 7-21-4101 in the manner and at the time prescribed by ordinance.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).

Cross-References

Municipal ordinances, 7-5-4201.

7-21-4103. Issuance of licenses. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).

Cross-References

Duties of City Clerk related to administration, 7-4-4501.

Part 42
Municipal Regulation of Business and Commodities

Part Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

7-21-4201. Regulation of certain activities. (1) The city or town council may license, tax, and regulate:

(a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;

(b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;

(c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character extends 3 miles beyond the limits of the city or town.

(3) The council of any city or town may enact necessary ordinances providing for the licensing, taxation, and regulation of soft drink establishments and all pool and billiard halls. The city or town council may regulate and limit the number of such licenses issued and provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

History: (1), (2)En. Subd. 16, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.15, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1965; Sec. 11-918, R.C.M. 1947; (3)En. Sec. 1, Ch. 136, L. 1923, re-en. Sec. 5039.84, R.C.M. 1935; Sec. 11-987, R.C.M. 1947; R.C.M. 1947, 11-918, 11-987; amd. Sec. 12, Ch. 249, L. 1979.

Cross-References

General powers of Municipal Council, 7-5-4101.
Municipal ordinances, 7-5-4201.

7-21-4202. Regulation of foodstuffs. The city or town council has power to provide for and regulate the inspection of flour, meal, and all provisions and oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

History: En. Subd. 22, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.21, R.C.M. 1935; R.C.M. 1947, 11-924; amd. Sec. 17, Ch. 577, L. 1987.

Cross-References

Authority of municipal corporations, 81-2-105.

7-21-4203. Authority to weigh, measure, and regulate certain commodities. The city or town council has power to regulate the inspection, weighing, and measuring of wood, coal, stone, corn or other grain, and hay within the city or town.

History: En. Subd. 23, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.22, R.C.M. 1935; R.C.M. 1947, 11-925.

Cross-References

Weights, measures, standards, and labeling, Title 30, ch. 12.

7-21-4204. Regulation of location of businesses, factories, and steam boilers. The city or town council has power:

(1) to regulate the location of slaughterhouses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town and to prohibit any offensive and unwholesome establishments within the city or town limits or within 3 miles thereof;

(2) to regulate the location of steam boilers.

History: En. Subds. 42, 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.41, 5039.69, R.C.M. 1935; R.C.M. 1947, 11-944, 11-972(part).

Cross-References

Municipal zoning, Title 76, ch. 2, part 3.

7-21-4205. Licensing and regulating of vehicles engaged in transporting persons and property. The city or town council has power to license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays and to fix the rate to be charged for the carriage of persons and property within the city or town and to the public works and property without the limits of the city or town.

History: En. Subd. 54, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.53, R.C.M. 1935; R.C.M. 1947, 11-956.

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

7-21-4206. Control of erection of signs and awnings. The city or town council has power to regulate the putting up of signs and awnings.

History: En. Subd. 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1935; R.C.M. 1947, 11-972(part).

7-21-4207. Authority to require records for pawn, secondhand, and junk shops. The city or town council has power to require the owners and keepers of pawn, secondhand, and junk shops to keep a record of all articles purchased or pawned to them. The record and the articles purchased or pawned are subject to the inspection of all police officers of the city or town.

History: En. Subd. 17, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.16, R.C.M. 1935; R.C.M. 1947, 11-919.

Cross-References

Pawnbrokers — regulation, 7-21-2120; Title 31, ch. 1, part 4.

7-21-4208. Regulation of purchases from minors by pawn, secondhand, and junk shops. The city or town council has power to prevent the keepers of pawn, secondhand, and junk shops from the purchasing of any article from a minor without the written consent of the parent or guardian of such minor.

History: En. Subd. 18, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.17, R.C.M. 1935; R.C.M. 1947, 11-920.

Cross-References

Pawnbrokers — regulation, 7-21-2120; Title 31, ch. 1, part 4.

7-21-4209. Establishment and supervision of markets. The city or town council has power to establish markets and market houses and provide for the supervision and use thereof.

History: En. Subd. 21, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.20, R.C.M. 1935; R.C.M. 1947, 11-923.

Cross-References

Public markets, Title 7, ch. 21, part 33.

7-21-4210. Regulation of dance houses. The city or town council has power to regulate or prohibit dance houses within the city or town limits and within 3 miles thereof.

History: En. Subd. 19, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.18, R.C.M. 1935; R.C.M. 1947, 11-921.

7-21-4211. Repealed. Sec. 2, Ch. 471, L. 1981.

History: En. Subd. 71, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.70, R.C.M. 1935; R.C.M. 1947, 11-973.

7-21-4212. Repealed. Sec. 14, Ch. 506, L. 1983.

History: En. Sec. 1, Ch. 471, L. 1981.

CHAPTER 22
WEED AND PEST CONTROL

Part 1 — Control of Dutch Elm Disease
(Repealed)

Parts 2 through 20 reserved

Part 21 — County Weed Control

7-22-2101. Definitions.
7-22-2102. Weed management districts established.
7-22-2103. District weed board.
7-22-2104. Repealed.
7-22-2105. Repealed.
7-22-2106. Renumbered 7-22-2115.
7-22-2107. Renumbered 7-22-2116.
7-22-2108. Renumbered 7-22-2117.
7-22-2109. Powers and duties of board — use of inmates in county jail work program.
7-22-2110. Repealed.
7-22-2111. Liability restrictions.
7-22-2112. Information on herbicide use.
7-22-2113 and 7-22-2114 reserved.
7-22-2115. Noxious weeds and seeds declared nuisance.
7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale.
7-22-2117. Violations.
7-22-2118 and 7-22-2119 reserved.
7-22-2120. Funding — reporting requirements — emergency exemption.
7-22-2121. Weed management program.
7-22-2122. Repealed.
7-22-2123. Procedure in case of noncompliance.
7-22-2124. Destruction of weeds by board.
7-22-2125. Repealed.
7-22-2126. Embargo.
7-22-2127. Repealed.
7-22-2128 and 7-22-2129 reserved.
7-22-2130. Weed district coordinator training.
7-22-2131 through 7-22-2140 reserved.
7-22-2141. Noxious weed fund authorized.
7-22-2142. Sources of money for noxious weed fund.
7-22-2143. Determination of cost of weed control program.
7-22-2144. Payment of cost of weed control program.
7-22-2145. Expenditures from noxious weed fund.
7-22-2146. Financial assistance to persons responsible for weed control.
7-22-2147. Repealed.
7-22-2148. Tax liability for payment of weed control expenses.
7-22-2149. Repealed.
7-22-2150. Cooperation with state and federal-aid programs.
7-22-2151. Cooperative agreements.
7-22-2152. Revegetation of rights-of-way and areas that have potential for noxious weed infestation.
7-22-2153. Voluntary agreements for control of noxious weeds along roads — liability of landowner who objects to weed district control measures — penalties.
7-22-2154. Public purchase or receipt of property — weed management plan.

Part 22 — Rodent Control Districts
(Repealed)

Part 23 — County Control of Insect Pests

7-22-2301. Destruction of insect pests authorized.
7-22-2302. Definition of term insect pest.
7-22-2303. Compensation of appointee.
7-22-2304. Authority to enter private land.
7-22-2305. Acquisition of supplies and equipment.
7-22-2306. Financing of insect pest control program.

Part 24 — Mosquito Control Districts
(Repealed)

Part 25 — County Vertebrate Pest Management

7-22-2501. Definitions.
7-22-2502. Establishment of program — cooperation.

7-22-2503. Agreements with department.
7-22-2504 through 7-22-2510 reserved.
7-22-2511. County vertebrate pest management fund.
7-22-2512. Financing of vertebrate pest management program — tax.
7-22-2513. Expenditures for supplies and services authorized.

Parts 26 through 40 reserved

Part 41 — Municipal Weed Control

7-22-4101. Control of nuisance weeds within municipality.

Chapter Cross-References

Agriculture — disease, pest, and weed control, Title 80, ch. 7.

Part 1
Control of Dutch Elm Disease
(Repealed)

7-22-101. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 1, Ch. 535, L. 1979.

7-22-102. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 2, Ch. 535, L. 1979.

7-22-103. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 3, Ch. 535, L. 1979.

7-22-104. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 11, Ch. 535, L. 1979.

7-22-105. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 12, Ch. 535, L. 1979.

7-22-106. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 13, Ch. 535, L. 1979.

7-22-107 through 7-22-110 reserved.

7-22-111. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 4, Ch. 535, L. 1979.

7-22-112. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 5, Ch. 535, L. 1979.

7-22-113. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 6(1), (2), (6), Ch. 535, L. 1979.

7-22-114. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 6(3) thru (5), Ch. 535, L. 1979.

7-22-115. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 7, Ch. 535, L. 1979.

7-22-116. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 8, Ch. 535, L. 1979.

7-22-117. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 9, Ch. 535, L. 1979.

7-22-118. Repealed. Sec. 1, Ch. 18, L. 1987.
History: En. Sec. 10, Ch. 535, L. 1979.

Parts 2 through 20 reserved

Part 21
County Weed Control

Part Cross-References

Municipal weed control, 7-22-4101.
Weed control — Department of Agriculture, Title 80, ch. 7, part 7.
Noxious weed management funding, Title 80, ch. 7, part 8.
Noxious Weed Seed Free Forage Act, Title 80, ch. 7, part 9.

7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Coordinator" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.

(4) "Department" means the department of agriculture provided for in 2-15-3001.

(5) "District" means a weed management district organized under 7-22-2102.

(6) "Native plant" means a plant indigenous to the state of Montana.

(7) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

(8) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

(9) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.

(10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 195, L. 1939; Secs. 16-1702, 16-1703, 16-1704, 16-1705, R.C.M. 1947; (3)En. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part), 16-1703, 16-1704, 16-1705; amd. Sec. 13, Ch. 249, L. 1979; amd. Sec. 1, Ch. 607, L. 1985; amd. Sec. 1, Ch. 303, L. 1991; amd. Sec. 4, Ch. 407, L. 2001; amd. Sec. 1, Ch. 98, L. 2003.

7-22-2102. Weed management districts established. A weed management district shall be formed in every county of this state and shall include all the land within the boundaries of the county, except that a weed management district may include more than one county through agreement of the commissioners of the affected counties.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969; amd. Sec. 2, Ch. 360, L. 1974; R.C.M. 1947, 16-1709.1; amd. Sec. 2, Ch. 607, L. 1985.

Cross-References

Embargo against introduction of noxious weed seed from other states, 80-7-701.

7-22-2103. District weed board. (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

(2) The board may call upon the county attorney for legal advice and services as it may require.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 14, Ch. 249, L. 1979; amd. Sec. 3, Ch. 607, L. 1985; amd. Sec. 2, Ch. 52, L. 1989; amd. Sec. 5, Ch. 681, L. 1991; amd. Sec. 17, Ch. 543, L. 1995.

Cross-References

General authority of County Commissioners, 7-5-2101.

Weed control — technical assistance, 80-7-711.

7-22-2104. Repealed. Sec. 8, Ch. 681, L. 1991.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 15, Ch. 249, L. 1979; amd. Sec. 4, Ch. 607, L. 1985.

7-22-2105. Repealed. Sec. 25, Ch. 543, L. 1995.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 5, Ch. 607, L. 1985.

7-22-2106. Renumbered 7-22-2115. Code Commissioner, 1985.

7-22-2107. Renumbered 7-22-2116. Code Commissioner, 1985.

7-22-2108. Renumbered 7-22-2117. Code Commissioner, 1985.

7-22-2109. Powers and duties of board — use of inmates in county jail work program. (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) employ a coordinator and other employees as necessary and provide for their compensation;

(b) purchase chemicals, materials, and equipment and pay other operational costs that it determines necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;

(e) enter into agreements with the county sheriff for the use of inmate labor for weed management under this part through a county jail work program that is authorized under 7-32-2225 through 7-32-2227;

(f) enter into cost-share agreements for noxious weed management;

(g) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds; and

(h) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed management program;

(b) establish management criteria for noxious weeds on all land within the district; and

(c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency.

History: En. Sec. 6, Ch. 607, L. 1985; amd. Sec. 18, Ch. 543, L. 1995; amd. Sec. 1, Ch. 203, L. 2001; amd. Sec. 5, Ch. 407, L. 2001.

7-22-2110. Repealed. Sec. 3, Ch. 407, L. 2009.

History: En. Sec. 15, Ch. 607, L. 1985; amd. Sec. 6, Ch. 407, L. 2001.

7-22-2111. Liability restrictions. A district is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, coordinators, and employees of a district.

History: En. Sec. 1, Ch. 516, L. 1987; amd. Sec. 7, Ch. 407, L. 2001.

7-22-2112. Information on herbicide use. The district must provide information on protective clothing, health hazards, and proper application techniques to mixers, loaders, and applicators of herbicides and make the information available for review by the public at the district office.

History: En. Sec. 2, Ch. 516, L. 1987.

7-22-2113 and 7-22-2114 reserved.

7-22-2115. Noxious weeds and seeds declared nuisance. Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance.

History: Ap. p. Sec. 1, Ch. 195, L. 1939; Sec. 16-1702, R.C.M. 1947; Ap. p. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part); Sec. 7-22-2106, MCA 1983; redes. 7-22-2115 by Code Commissioner, 1985.

Cross-References

Nuisances, Title 27, ch. 30.

Weed control, Title 80, ch. 7, part 7.

7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale. (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the person who owns the property shall notify the owner's agent and the purchaser of the existence of noxious weeds on the property offered for sale.

History: En. Sec. 2, Ch. 195, L. 1939; amd. Sec. 1, Ch. 11, L. 1961; R.C.M. 1947, 16-1706; amd. Sec. 7, Ch. 607, L. 1985; Sec. 7-22-2107, MCA 1983; redes. 7-22-2116 by Code Commissioner, 1985; amd. Sec. 8, Ch. 407, L. 2001; amd. Sec. 1, Ch. 313, L. 2007.

Cross-References

Embargo against introduction of noxious weed seed from other states, 80-7-701.

7-22-2117. Violations. (1) Any person who in any manner interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is liable for a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds from the impacted property in addition to any penalty imposed under 7-22-2124.

(2) All fines, bonds, and penalties collected under the provisions of this part must be paid to the county treasurer of each county and placed by the county treasurer into a fund to be known as the noxious weed fund.

History: En. Sec. 18, Ch. 195, L. 1939; R.C.M. 1947, 16-1722; amd. Sec. 16, Ch. 249, L. 1979; amd. Sec. 8, Ch. 607, L. 1985; Sec. 7-22-2108, MCA 1983; redes. 7-22-2117 by Code Commissioner, 1985; amd. Sec. 4, Ch. 557, L. 1987; amd. Sec. 9, Ch. 407, L. 2001.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by a Justice's Court, 3-10-601.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Weed control — disposition of fines and inspection fees, 80-7-704.

7-22-2118 and 7-22-2119 reserved.

7-22-2120. Funding — reporting requirements — emergency exemption. (1) (a) Before a district is eligible to receive from the state any state funding or federal funding, the district shall provide the department with a comprehensive weed management plan, as provided in 7-22-2121.

(b) Upon receipt of the district's comprehensive weed management plan by the department, the district may apply for and receive state funding.

(c) A district's comprehensive weed management plan must be updated and submitted to the department every 2 years.

(d) The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities.

(2) The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7-815.

History: En. Sec. 1, Ch. 407, L. 2001.

Cross-References

Noxious weed management funding, Title 80, ch. 7, part 8.

7-22-2121. Weed management program. (1) The noxious weed management program must be based on a plan approved by the board.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;

(c) specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and

(d) estimate the personnel, operations, and equipment costs of the proposed program.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the confines of the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial

vegetation and wildlife habitat. Where at all possible, methods for such control shall include cultural, chemical, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in such zones may be more or less stringent than the general management criteria for the district.

History: **En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part); amd. Sec. 9, Ch. 607, L. 1985; amd. Sec. 2, Ch. 530, L. 1991.**

Cross-References

Weed control — technical assistance, 80-7-711.

Funding of noxious plant management programs, 80-7-712.

7-22-2122. Repealed. Sec. 32, Ch. 607, L. 1985.

History: **En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).**

7-22-2123. Procedure in case of noncompliance. (1) When a complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's land within the district, that person must be notified by mail or telephone of the complaint and the board may request inspection of the land. The board or its authorized agent and the landowner or the landowner's representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If within 10 days after notification the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.

(2) If noxious weeds are found, the board or coordinator shall notify the person or the person's representative and seek voluntary compliance with the district noxious weed management program. If voluntary compliance or cooperation has not occurred within 10 days of the notification required under this subsection, the person is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2124.

(3) A person is considered to be in compliance if the person submits and the board accepts a proposal to undertake specified control measures and is in compliance as long as the person performs according to the terms of the proposal. The proposal must include a requirement that the person notify the board as measures in the proposal are taken. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(4) In accepting or rejecting a proposal, the board shall consider the economic impact on the person and the person's neighbors, practical biological and environmental limitations, and alternative control methods to be used.

History: **(1)En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; Sec. 16-1713, R.C.M. 1947; (2)En. Sec. 10, Ch. 195, L. 1939; amd. Sec. 2, Ch. 90, L. 1941; Sec. 16-1714, R.C.M. 1947; R.C.M. 1947, 16-1713(part), 16-1714; amd. Sec. 13, Ch. 607, L. 1985; amd. Sec. 1, Ch. 141, L. 1987; amd. Sec. 10, Ch. 407, L. 2001; amd. Sec. 1, Ch. 407, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 407 in (1) near middle of first sentence after "land within the district" deleted "in violation of the law" and at beginning of last sentence substituted "If within 10 days after notification" for "If after reasonable effort"; in (2) near beginning of second sentence after "voluntary compliance" substituted remainder of sentence regarding effect of lack of cooperation for "is not possible, notice of noncompliance must be sent to the person by certified mail"; deleted former (3) that read: "(3) The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the district's management criteria;

(d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated; and

(e) the right of the person to request, within the time specified in subsection (3)(d), an administrative hearing as provided by 7-22-2110"; in (3) inserted second sentence regarding notification requirement; and made minor changes in style. Amendment effective April 28, 2009.

Cross-References

Construction of term — written notice, 1-4-108.

Weed control — technical assistance, 80-7-711.

7-22-2124. Destruction of weeds by board. (1) If corrective action is not taken within the time specified in 7-22-2123(2) and a proposal is not made and accepted as provided in 7-22-2123(3), the board may enter upon the person's land and institute appropriate control measures. In that case, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time, together with a penalty not exceeding 25% of the total cost incurred except that a penalty may not be assessed if contact was not made with the landowner or the landowner's representative pursuant to 7-22-2123. When the penalty is collected, it must be credited to the noxious weed fund created pursuant to 7-22-2141 to be used for appropriate control measures pursuant to this section. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent. The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to destroy the weeds. The commercial applicator shall agree to carry any insurance required by the board.

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3) If a person receiving an order to take corrective action requests an injunction or stay of the corrective action in district court within 10 days of receipt of the order, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. In that case, the person is liable for costs as provided in subsection (1) only to the extent determined appropriate by the board, commissioners, or court that finally resolves the matter.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 14, Ch. 607, L. 1985; amd. Sec. 2, Ch. 141, L. 1987; amd. Sec. 11, Ch. 407, L. 2001; amd. Sec. 2, Ch. 407, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 407 in (1) near beginning of first sentence inserted "within the time specified in 7-22-2123(2)" and after "made and accepted" substituted "as provided in 7-22-2123(3)" for "or a request for an administrative hearing is not made within the time specified in the notice", in second sentence substituted "25%" for "50%" and at end inserted exception clause, and inserted third sentence regarding collection and crediting of penalty; in (3) after "corrective action requests an" substituted reference to injunction or stay after receipt of order for "administrative hearing". Amendment effective April 28, 2009.

Cross-References

Role and duties of County Clerk, 7-4-2611.
Employment of personnel by County Commissioners, 7-5-2107.
Weed control — rules, 80-7-714.

7-22-2125. Repealed. Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 12, Ch. 195, L. 1939; amd. Sec. 4, Ch. 228, L. 1947; R.C.M. 1947, 16-1716.

7-22-2126. Embargo. (1) The board may establish embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not move or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo is found to have met all of the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The board may also release the forage under the following conditions:

(a) verification of guaranteed delivery back to the original producer, as defined in 80-7-903;
(b) burning or disposal of the forage in a manner acceptable to the board; or
(c) other alternatives approved by the board.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees any of the conditions set forth in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred

and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.

History: **En. Sec. 3, Ch. 195, L. 1939; R.C.M. 1947, 16-1707; amd. Sec. 16, Ch. 607, L. 1985; amd. Sec. 17, Ch. 521, L. 1995; amd. Sec. 2, Ch. 313, L. 2007.**

Cross-References

Embargo against introduction of noxious weed seed from other states, 80-7-701.

7-22-2127. Repealed. Sec. 32, Ch. 607, L. 1985.

History: **En. Sec. 14, Ch. 195, L. 1939; amd. Sec. 5, Ch. 228, L. 1947; R.C.M. 1947, 16-1718.**

7-22-2128 and 7-22-2129 reserved.

7-22-2130. Weed district coordinator training. Within the limitations of available funds, the board shall ensure that the weed district coordinator obtains training to properly implement the noxious weed management program described in 7-22-2121. The department shall specify through rulemaking the level and type of training necessary to fulfill this requirement.

History: **En. Sec. 1, Ch. 530, L. 1991; amd. Sec. 12, Ch. 407, L. 2001.**

7-22-2131 through 7-22-2140 reserved.

7-22-2141. Noxious weed fund authorized. (1) The commissioners of each county in this state shall create a noxious weed management fund, to be designated the "noxious weed fund".

(2) This fund shall be kept separate and distinct by the county treasurer.

History: **En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part); amd. Sec. 17, Ch. 607, L. 1985.**

Cross-References

Office of County Treasurer, 7-4-3002; Title 7, ch. 6, part 21.

General authority of County Commissioners, 7-5-2101.

7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or $100,000. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) The commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. The amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.

History: **En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part); amd. Sec. 18, Ch. 607, L. 1985; amd. Sec. 3, Ch. 530, L. 1991; amd. Sec. 64, Ch. 584, L. 1999; amd. Sec. 13, Ch. 407, L. 2001; amd. Sec. 22, Ch. 495, L. 2001; amd. Sec. 72, Ch. 574, L. 2001; amd. Sec. 3, Ch. 313, L. 2007.**

Cross-References

Authorization for county mill levy, 7-6-2501.

Taxation — public and governmental purposes, 7-6-2527.
Funding of noxious plant management programs, 80-7-712.

7-22-2143. Determination of cost of weed control program. Based on the board's recommendations, the commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part); amd. Sec. 19, Ch. 607, L. 1985; amd. Sec. 4, Ch. 530, L. 1991.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-22-2144. Payment of cost of weed control program. The total cost of weed control within the district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way of a state or federal highway must, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district must be assessed to and collected from the responsible person as set forth in 7-22-2124.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part); amd. Sec. 20, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 13, Ch. 51, L. 1999.

Cross-References

Fund structure, 17-2-102.
Highway maintenance agreements with local governments, 60-2-204.
Distribution and apportionment of highway funds, Title 60, ch. 3.

7-22-2145. Expenditures from noxious weed fund. (1) The noxious weed fund must be expended by the commissioners at the time and in the manner as is recommended by the board to secure the control of noxious weeds.

(2) Warrants upon the fund must be drawn by the board. Warrants may not be drawn except upon claims duly itemized by the claimant, except payroll claims that must be itemized and certified by the board, and each claim must be presented to the commissioners for approval before the warrant is countersigned by the commissioners.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part); amd. Sec. 21, Ch. 607, L. 1985; amd. Sec. 5, Ch. 530, L. 1991.

Cross-References

General authority of County Commissioners, 7-5-2101.
County warrants, Title 7, ch. 6, part 26.

7-22-2146. Financial assistance to persons responsible for weed control. (1) The commissioners, upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program. These procedures may include the cost-share rate or amount and for what purposes cost-share funds may be used.

(2) (a) Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the person. The agreement must, in the board's judgment, provide for effective weed management.

(b) The agreement must specify:

(i) costs that must be paid from the noxious weed fund;

(ii) costs that must be paid by the person;

(iii) a location-specific weed management plan that must be followed by the person; and

(iv) reporting requirements of the person to the board.

(c) The cost-share agreement must be signed by the person and, upon approval of the board, by the presiding officer.

(3) The agreement must contain a statement disclaiming any liability of the board for any injuries or losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must be canceled and the provisions of 7-22-2124 apply to that person.

(4) (a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2123 or otherwise, or under any cost-share agreement entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent.

(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount not repaid, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part); amd. Sec. 22, Ch. 607, L. 1985; amd. Sec. 14, Ch. 407, L. 2001.

Cross-References

Funding of noxious plant management programs, 80-7-712.

7-22-2147. Repealed. Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).

7-22-2148. Tax liability for payment of weed control expenses. (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the person billed under 7-22-2124 is repaid on or before the date due, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to the owner, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 17, Ch. 249, L. 1979; amd. Sec. 23, Ch. 607, L. 1985; amd. Sec. 6, Ch. 530, L. 1991.

Cross-References

Role and duties of County Clerk, 7-4-2611.

Duties of County Clerk related to taxation, 7-6-2504.

7-22-2149. Repealed. Sec. 5, Ch. 313, L. 2007.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).

7-22-2150. Cooperation with state and federal-aid programs. The board may cooperate with any state or federal-aid program that becomes available if the district complies with 7-22-2120. Under a plan of cooperation, the direction of the program must be under the direct supervision of the board of the district in which the program operates.

History: En. Sec. 17, Ch. 195, L. 1939; amd. Sec. 9, Ch. 228, L. 1947; R.C.M. 1947, 16-1721; amd. Sec. 24, Ch. 607, L. 1985; amd. Sec. 15, Ch. 407, L. 2001.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

Endowments, Title 17, ch. 3, part 10.

Funding of noxious plant management programs, 80-7-712.

7-22-2151. Cooperative agreements. (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) an integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state electronic access system.

History: En. Sec. 10, Ch. 607, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 31, Ch. 418, L. 1995; amd. Sec. 1, Ch. 519, L. 1995; amd. Sec. 30, Ch. 546, L. 1995; amd. Sec. 16, Ch. 407, L. 2001; amd. Sec. 4, Ch. 313, L. 2007.

Cross-References

Department of Natural Resources and Conservation established, 2-15-3301.
University System, Title 20, ch. 25.
Department of Corrections — general powers and duties, Title 53, ch. 1, part 2.
Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.
Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

7-22-2152. Revegetation of rights-of-way and areas that have potential for noxious weed infestation. (1) Any person or state agency proposing a mine, a major facility under Title 75, chapter 20, an electric, communication, gas, or liquid transmission line, a solid waste facility, a highway or road, a subdivision, a commercial, industrial, or government development, or any other development that needs state or local approval and that results in the potential for noxious weed infestation within a district shall notify the board at least 15 days prior to the activity.

(2) Whenever any person or agency constructs a road, an irrigation or drainage ditch, a pipeline, an electric, communication, gas, or liquid transmission line, or any other development on an easement or right-of-way, the board shall require that the areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3) (a) The person or agency committing the action shall submit to the board a written plan specifying the methods to be used to accomplish revegetation at least 15 days prior to the activity. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. The activity for which notice is given may not occur until the plan is approved by the board and signed by the presiding officer of the board and by the person or a representative of the agency responsible for the action. The signed plan constitutes a binding agreement between the board and the person or agency. The plan must be approved, with revisions if necessary, within 10 days of receipt by the board.

History: En. Sec. 11, Ch. 607, L. 1985; amd. Sec. 17, Ch. 407, L. 2001.

Cross-References

Highways — acquisition and disposition of property, Title 60, ch. 4.
Montana Environmental Policy Act, Title 75, ch. 1.
The Montana Solid Waste Management Act, Title 75, ch. 10, part 2.
Montana Major Facility Siting Act, Title 75, ch. 20.
Subdivisions, Title 76, ch. 2, 3.

Mining on state lands, Title 77, ch. 3.
Oil and gas conservation, Title 82, ch. 11.
Hard-rock mining impact, Title 90, ch. 6, part 3.

7-22-2153. Voluntary agreements for control of noxious weeds along roads — liability of landowner who objects to weed district control measures — penalties. (1) Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through the person's land. The coordinator may draft a voluntary agreement upon the request of and in cooperation with the person. However, the agreement must, in the board's judgment, provide for effective weed management. The weed management agreement must be signed by the person and, upon approval of the board, by the presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.

(2) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the person in managing noxious weeds on the state or county highway right-of-way. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the person signing the agreement. If the board later finds that the person has failed to adhere to the agreement, the board shall issue an order informing the person that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the person complies with the provisions of the agreement within a specified time period.

(3) (a) If a person objects to weed control measures bordering a state or county highway right-of-way and does not enter a voluntary agreement pursuant to subsections (1) and (2) and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the person that the management of noxious weeds on the right-of-way will be undertaken by the board unless the person provides alternative weed control within 30 days.

(b) A person who does not provide alternative weed control within the time specified in subsection (3)(a) is guilty of a misdemeanor and, upon conviction, shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than $500 or more than $2,000, plus the costs of weed control provided by the board.

History: **En. Sec. 12, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 433, L. 1999; amd. Sec. 18, Ch. 407, L. 2001.**

Cross-References

Department of Transportation, Title 60, ch. 2, part 2.

7-22-2154. Public purchase or receipt of property — weed management plan. (1) Except as provided in subsection (4), prior to the purchase of real property with public funds or the receipt of real property by a nonfederal public entity, the purchaser or grantee shall have the property inspected by the county weed management district. The county weed management district's report regarding the property must be filed with the purchaser or grantee. The costs associated with the inspection must be borne by the seller or grantor.

(2) If the report indicates that there are noxious weeds present on the property, the purchaser, seller, grantee, or grantor shall develop a noxious weed management agreement to ensure compliance with the district noxious weed management program. However, unless the parties agree otherwise, a seller or grantor is obligated by a noxious weed agreement only until the property sale or transfer is completed. Except as provided in subsection (4), the weed management agreement must be incorporated into the purchase agreement.

(3) The provisions of this section do not apply to:

(a) the state acquisition or disposition of a public right-of-way pursuant to Title 60, chapter 4; or

(b) lands sold or purchased through land banking pursuant to 77-2-361 through 77-2-367.

(4) If a transfer of property will occur during the winter months when the ability to identify noxious weeds is significantly reduced by snow cover, the purchaser, seller, grantee, or grantor may request a 6-month extension for completion of the inspection and any noxious weed management agreement that may be required. If, upon inspection, it is determined that a

noxious weed management agreement is necessary, unless otherwise agreed by the parties, the purchaser or grantee is responsible for implementing the provisions of that agreement.

History: En. Sec. 1, Ch. 395, L. 2005.

Part 22
Rodent Control Districts
(Repealed)

7-22-2201. Repealed. Sec. 21, Ch. 391, L. 1981.

History: En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).

7-22-2202. Repealed. Sec. 21, Ch. 391, L. 1981.

History: En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).

7-22-2203. Repealed. Sec. 21, Ch. 391, L. 1981.

History: En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

7-22-2204. Repealed. Sec. 21, Ch. 391, L. 1981.

History: En. Sec. 3, Ch. 122, L. 1949; R.C.M. 1947, 16-1177.

7-22-2205. Repealed. Sec. 21, Ch. 391, L. 1981.

History: En. Sec. 2, Ch. 122, L. 1949; R.C.M. 1947, 16-1176.

7-22-2206. Repealed. Sec. 21, Ch. 391, L. 1981.

History: En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

7-22-2207. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 391, L. 1981; amd. Sec. 1, Ch. 67, L. 1983.

7-22-2208. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 391, L. 1981.

7-22-2209. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 19, Ch. 391, L. 1981.

7-22-2210. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 3, Ch. 391, L. 1981.

7-22-2211. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 391, L. 1981.

7-22-2212. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 391, L. 1981; amd. Sec. 30, Ch. 349, L. 1985; amd. Sec. 59, Ch. 354, L. 2001.

7-22-2213. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 6, Ch. 391, L. 1981.

7-22-2214. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 7, Ch. 391, L. 1981; amd. Sec. 663, Ch. 61, L. 2007.

7-22-2215. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 8, Ch. 391, L. 1981; amd. Sec. 2, Ch. 67, L. 1983; amd. Sec. 28, Ch. 607, L. 1985; amd. Sec. 6, Ch. 681, L. 1991; amd. Sec. 19, Ch. 543, L. 1995.

7-22-2216. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9, Ch. 391, L. 1981; amd. Sec. 3, Ch. 67, L. 1983; amd. Sec. 20, Ch. 543, L. 1995.

7-22-2217 through 7-22-2220 reserved.

7-22-2221. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 10, Ch. 391, L. 1981.

7-22-2222. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 11, Ch. 391, L. 1981; amd. Sec. 65, Ch. 584, L. 1999; amd. Sec. 73, Ch. 574, L. 2001.

7-22-2223. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 12, Ch. 391, L. 1981.

7-22-2224. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 13, Ch. 391, L. 1981.

7-22-2225. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 14, Ch. 391, L. 1981; amd. Sec. 664, Ch. 61, L. 2007.

7-22-2226. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 15, Ch. 391, L. 1981.

7-22-2227 through 7-22-2230 reserved.

7-22-2231. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 16, Ch. 391, L. 1981.

7-22-2232. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 17, Ch. 391, L. 1981; amd. Sec. 60, Ch. 354, L. 2001.

7-22-2233. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 18, Ch. 391, L. 1981.

Part 23
County Control of Insect Pests

Part Cross-References

Control of diseases and insects in nurseries, Title 80, ch. 7, part 1.
Crop insect detection and management, Title 80, ch. 7, part 5.

7-22-2301. Destruction of insect pests authorized. The board of commissioners of any county of this state where there are any insect pests is hereby authorized and empowered to appoint some suitable person or persons whose duty it shall be, acting under the direction of the state department of agriculture, to poison, kill, catch, and exterminate insect pests within such county.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

Cross-References

General authority of County Commissioners, 7-5-2101.
Insect detection, surveillance, and control programs, 80-7-502.

7-22-2302. Definition of term insect pest. The term "insect pest" as used in this part shall include grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921; re-en. Sec. 4505, R.C.M. 1921; re-en. Sec. 4505, R.C.M. 1935; amd. Sec. 11, Ch. 433, L. 1975; R.C.M. 1947, 16-1153.

Cross-References

Crop insects — definitions, 80-7-501.

7-22-2303. Compensation of appointee. Any person appointed under the provisions of 7-22-2301 shall receive such compensation as the county commissioners agree to pay, with warrants in payment thereof drawn on the general fund.

History: En. Sec. 2, Ch. 227, L. 1921; re-en. Sec. 4502, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1923; re-en. Sec. 4502, R.C.M. 1935; amd. Sec. 8, Ch. 433, L. 1975; R.C.M. 1947, 16-1150.

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

7-22-2304. Authority to enter private land. Any person appointed pursuant to 7-22-2301 to control insect pests may fly over or enter upon any farm, railroad right-of-way, grounds, or premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

Cross-References

Insect detection, surveillance, and control programs, 80-7-502.

7-22-2305. Acquisition of supplies and equipment. The board of county commissioners of any county may from time to time purchase or contract to hire such quantities and amounts of poisons, traps, and other equipment necessary to poison, kill, catch, or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

History: En. Sec. 3, Ch. 227, L. 1921; re-en. Sec. 4503, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1923; re-en. Sec. 4503, R.C.M. 1935; amd. Sec. 9, Ch. 433, L. 1975; R.C.M. 1947, 16-1151.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-22-2306. Financing of insect pest control program. (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture.

(2) Subject to 15-10-420, in the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax must be levied on all taxable property in the county.

(3) If there is no money in the general fund with which to pay the warrants, they must be registered and bear interest in the same manner as other county warrants. In this case, the interest must be computed and added to the amount for which the tax is levied.

History: En. Sec. 4, Ch. 227, L. 1921; re-en. Sec. 4504, R.C.M. 1921; amd. Sec. 3, Ch. 25, L. 1923; re-en. Sec. 4504, R.C.M. 1935; amd. Sec. 10, Ch. 433, L. 1975; amd. Sec. 8, Ch. 362, L. 1977; amd. Sec. 37, Ch. 566, L. 1977; R.C.M. 1947, 16-1152; amd. Sec. 66, Ch. 584, L. 1999; amd. Sec. 74, Ch. 574, L. 2001.

Cross-References

Authorization for county mill levy, 7-6-2501.

Taxation — public and governmental purposes, 7-6-2527.

Financing of crop insect control program, 80-7-504.

Part 24
Mosquito Control Districts
(Repealed)

7-22-2401. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 183, L. 1953; amd. Sec. 1, Ch. 337, L. 1973; R.C.M. 1947, 16-4201; amd. Sec. 665, Ch. 61, L. 2007.

7-22-2402. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 183, L. 1953; R.C.M. 1947, 16-4202.

7-22-2403. Repealed. Sec. 39, Ch. 286, L. 2009.

History: (1)En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; Sec. 16-4203, R.C.M. 1947; (2)En. Secs. 4, 5, Ch. 183, L. 1953; amd. Secs. 3, 4, Ch. 337, L. 1973; amd. Secs. 2, 3, Ch. 399, L. 1975; Secs. 16-4204, 16-4205, R.C.M. 1947; R.C.M. 1947, 16-4203(1), 16-4204(1), 16-4205(part); amd. Sec. 18, Ch. 249, L. 1979; amd. Sec. 32, Ch. 418, L. 1995; amd. Sec. 1, Ch. 73, L. 1997; amd. Sec. 1, Ch. 555, L. 2005.

7-22-2404. Repealed. Sec. 5, Ch. 555, L. 2005.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

7-22-2405. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

7-22-2406. Repealed. Sec. 5, Ch. 555, L. 2005.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part); amd. Sec. 19, Ch. 249, L. 1979; amd. Sec. 9, Ch. 526, L. 1983; amd. Sec. 31, Ch. 349, L. 1985; amd. Sec. 61, Ch. 354, L. 2001.

7-22-2407. Repealed. Sec. 5, Ch. 555, L. 2005.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part).

7-22-2408. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part); amd. Sec. 62, Ch. 354, L. 2001; amd. Sec. 2, Ch. 555, L. 2005.

7-22-2409. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part); amd. Sec. 33, Ch. 418, L. 1995; amd. Sec. 2, Ch. 73, L. 1997; amd. Sec. 3, Ch. 555, L. 2005.

7-22-2410. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part); amd. Sec. 666, Ch. 61, L. 2007.

7-22-2411. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part); amd. Sec. 20, Ch. 249, L. 1979; amd. Sec. 7, Ch. 681, L. 1991; amd. Sec. 21, Ch. 543, L. 1995.

7-22-2412. Repealed. Sec. 8, Ch. 681, L. 1991.
History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2413. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2414. Repealed. Sec. 25, Ch. 543, L. 1995.
History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2415. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 8, Ch. 183, L. 1953; R.C.M. 1947, 16-4208; amd. Sec. 22, Ch. 543, L. 1995.

7-22-2416. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(a).

7-22-2417. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(b).

7-22-2418. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 1, Ch. 2, L. 1969; amd. Sec. 7, Ch. 337, L. 1973; R.C.M. 1947, 16-4209; amd. Sec. 34, Ch. 418, L. 1995; amd. Sec. 3, Ch. 73, L. 1997.

7-22-2419. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

7-22-2420. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 14, Ch. 183, L. 1953; R.C.M. 1947, 16-4214.

7-22-2421 through 7-22-2430 reserved.

7-22-2431. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part).

7-22-2432. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part); amd. Sec. 1, Ch. 782, L. 1991; amd. Sec. 67, Ch. 584, L. 1999; amd. Sec. 75, Ch. 574, L. 2001.

7-22-2433. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

7-22-2434. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(c); amd. Sec. 5, Ch. 557, L. 1987; amd. Sec. 667, Ch. 61, L. 2007.

7-22-2435 through 7-22-2440 reserved.

7-22-2441. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2442. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part); amd. Sec. 4, Ch. 555, L. 2005.

7-22-2443. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2444. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2445. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

7-22-2446. Repealed. Sec. 39, Ch. 286, L. 2009.
History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part); amd. Sec. 21, Ch. 249, L. 1979; amd. Sec. 10, Ch. 526, L. 1983; amd. Sec. 32, Ch. 349, L. 1985; amd. Sec. 63, Ch. 354, L. 2001.

7-22-2447. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).**

7-22-2448. Repealed. Sec. 39, Ch. 286, L. 2009.

History: **En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).**

Part 25
County Vertebrate Pest Management

7-22-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture.

(2) "Governing body" means the governing body specified by the form of government adopted by a county.

(3) "Management of vertebrate pests" means the correct identification of a vertebrate pest; recognition of its biological and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress such damage, nuisance, or injury; and evaluating the effects of these control methods.

(4) "Vertebrate pests" means jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when such animals and birds are injurious to agriculture, other industries, or the public.

History: **En. Sec. 4, Ch. 67, L. 1983; amd. Sec. 10, Ch. 67, L. 1983.**

Cross-References

Department of Agriculture, Title 2, ch. 15, part 30.

7-22-2502. Establishment of program — cooperation. (1) A governing body may establish a program to manage and suppress vertebrate pests.

(2) A governing body that establishes a program under subsection (1) must cooperate with the department in the management and suppression of vertebrate pests, including cooperation in regard to the department's organized and systematic plans covering methods and procedures to be followed in the management and suppression of vertebrate pests.

(3) A governing body, in cooperation with the department, may enter into cooperative agreements with state and federal governmental agencies, counties, rodent control districts, associations, corporations, or individuals when cooperation is necessary to promote the management and suppression of vertebrate pests.

History: **En. Sec. 5, Ch. 67, L. 1983.**

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

Vertebrate pest management, Title 80, ch. 7, part 11.

7-22-2503. Agreements with department. A governing body, when cooperating with the department, may enter into written agreements with the department covering the methods and procedures to be followed in the management and suppression of vertebrate pests, the extent of supervision to be exercised by the governing body, and the use and expenditures of state and county money.

History: **En. Sec. 6, Ch. 67, L. 1983; amd. Sec. 10, Ch. 67, L. 1983.**

7-22-2504 through 7-22-2510 reserved.

7-22-2511. County vertebrate pest management fund. A governing body that establishes a program to manage and suppress vertebrate pests must establish a county vertebrate pest management fund, from which the governing body may appropriate money for the operation of the program.

History: **En. Sec. 7, Ch. 67, L. 1983.**

7-22-2512. Financing of vertebrate pest management program — tax. (1) A governing body may:

(a) appropriate from the county general fund an amount to fund vertebrate pest management and transfer it to the county vertebrate pest management fund; and

(b) subject to 15-10-420, levy a vertebrate pest management tax on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both 7-11-1024 and this section for the control of rodents. Land within a rodent control district may be taxed under this section only in a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management and suppression of vertebrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund.

History: En. Sec. 8, Ch. 67, L. 1983; amd. Sec. 68, Ch. 584, L. 1999; amd. Sec. 76, Ch. 574, L. 2001; amd. Sec. 34, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (1)(b) in second sentence after "both" substituted "7-11-1024" for "7-22-2222" and at end after "rodents" deleted "as defined in 7-22-2207"; and made minor changes in style. Amendment effective July 1, 2009.

7-22-2513. Expenditures for supplies and services authorized. A governing body may make necessary expenditures from the county vertebrate pest management fund for equipment, materials, supplies, personal services, and other expenses. A governing body may also purchase vertebrate pest management supplies and equipment for use by cooperating governmental agencies, counties, rodent control districts, associations, corporations, or individuals in the management of vertebrate pests if the governing body charges such users the approximate cost of the supplies and equipment. Receipts from the resale of such supplies and equipment to the cooperating users must be credited to the county vertebrate pest management fund.

History: En. Sec. 9, Ch. 67, L. 1983.

Parts 26 through 40 reserved

Part 41
Municipal Weed Control

Part Cross-References

County weed control, Title 7, ch. 22, part 21.
Department of Agriculture — weed control, Title 80, ch. 7, part 7.
Ordinances for pesticide regulation, 80-8-120.

7-22-4101. Control of nuisance weeds within municipality. (1) The city or town council has power to:

(a) declare and determine what vegetation within the city or town shall be nuisance weeds;

(b) provide the manner in which they shall be exterminated;

(c) require the owner or owners of any property within said city or town to exterminate or remove nuisance weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and

(d) provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the nuisance weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

(2) A noxious weed as defined in 7-22-2101 may not be declared a nuisance weed under this section.

History: En. Subd. 83, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.82, R.C.M. 1935; R.C.M. 1947, 11-985; amd. Sec. 29, Ch. 607, L. 1985.

Cross-References

County weed control, Title 7, ch. 22, part 21.

CHAPTER 23
DOMESTIC ANIMAL CONTROL AND PROTECTION

Part 1 — Local Government Control of Dogs

7-23-101. Dog collar and license tag required.
7-23-102. Seizure and impounding of dogs running at large without tag.
7-23-103. Local government cooperation in the operation of pounds.

7-23-104. Violations.
7-23-105. Disposition of fines.

Parts 2 through 20 reserved

Part 21 — County Control of Dogs

7-23-2101. Repealed.
7-23-2102. Repealed.
7-23-2103. Repealed.
7-23-2104. Repealed.
7-23-2105. Repealed.
7-23-2106. Repealed.
7-23-2107. Repealed.
7-23-2108. County control of dogs.
7-23-2109. Vicious dog control.
7-23-2110. Barking dog control.
7-23-2111. Repealed.
7-23-2112. Repealed.
7-23-2113. Repealed.
7-23-2114. Repealed.
7-23-2115. Repealed.
7-23-2116. Repealed.
7-23-2117. Repealed.

Parts 22 through 40 reserved

Part 41 — Municipal Control and Protection of Domestic Animals

7-23-4101. Control of animals running at large.
7-23-4102. Licensing of dogs.
7-23-4103. Relation of municipal dog license tags to other laws.
7-23-4104. Cruelty to animals.

Part 42 — Required Spaying or Neutering of Cat or Dog

7-23-4201. Sale or adoption of cat or dog — information required.
7-23-4202. Adoption of cat or dog from humane society, animal shelter, or pound — spay or neuter required — deposit — penalty — exceptions.
7-23-4203. Additional spaying or neutering requirements not precluded — cooperative agreements.

Chapter Cross-References

Containment of livestock, Title 81, ch. 4.

Part 1
Local Government Control of Dogs

7-23-101. Dog collar and license tag required. It is unlawful, when part 21, 7-23-4103, and this part apply, for any person to own, harbor, or keep any dog over the age of 5 months or to permit a dog owned, harbored, or controlled by the person to run at large unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner. It is lawful to remove the collar and license tag when the dog is under the immediate control of its owner or the owner's agent.

History: En. Sec. 1, Ch. 280, L. 1959; R.C.M. 1947, 16-4601; amd. Sec. 668, Ch. 61, L. 2007.

7-23-102. Seizure and impounding of dogs running at large without tag. A dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of part 21, 7-23-4103, and this part may be seized and impounded by any sheriff, deputy sheriff, police officer, game warden, county poundmaster, or other law enforcement officer.

History: En. Sec. 5, Ch. 280, L. 1959; R.C.M. 1947, 16-4605; amd. Sec. 669, Ch. 61, L. 2007.

7-23-103. Local government cooperation in the operation of pounds. The board of county commissioners may enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

History: En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-23-104. Violations. Violation of any provision of this part shall constitute a misdemeanor.

History: En. Sec. 13, Ch. 280, L. 1959; R.C.M. 1947, 16-4613; amd. Sec. 3, Ch. 508, L. 1983.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-23-105. Disposition of fines. All fines collected under the provisions of this part and part 21, except those collected by a justice's court, shall be paid into the county treasury and shall be used to pay fees, salaries, costs, or expenses for the enforcement of this part and part 21.

History: En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part); amd. Sec. 6, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by Justice's Court, 3-10-601.
Deposit and investment of public money, Title 7, ch. 6, part 2.

Parts 2 through 20 reserved

Part 21
County Control of Dogs

Part Cross-References

Animals unlawfully running at large, Title 81, ch. 4, part 2.

7-23-2101. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2102. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2103. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2104. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2105. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2106. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2107. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part).

7-23-2108. County control of dogs. (1) The governing body of the county may regulate, restrain, or prohibit the running at large of dogs by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107 and which may provide for the wearing of a license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog.

(2) Violation of an ordinance adopted under subsection (1) is a misdemeanor.

(3) The county governing body is authorized to impound, sell, kill, or otherwise destroy dogs found at large contrary to ordinances.

(4) Nothing in this section restricts the governing body from enacting dog control measures in a portion of the county only.

History: En. Sec. 1, Ch. 208, L. 1979; amd. Sec. 2, Ch. 508, L. 1983.

7-23-2109. Vicious dog control. (1) The county governing body may regulate, restrain, control, kill, or quarantine any vicious dog, whether such dog is licensed or unlicensed, by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) A violation of any ordinance established as provided in subsection (1) is a misdemeanor.

(3) For purposes of this section, a "vicious dog" is defined as one which bites or attempts to bite any human being without provocation or which harasses, chases, bites, or attempts to bite any other animal. The term "animal" includes all livestock and any domestic pet.

History: En. Sec. 2, Ch. 208, L. 1979.

Cross-References

Liability of owner of vicious dog, 27-1-715.

7-23-2110. Barking dog control. The governing body of a county may, by adoption of an ordinance that substantially complies with 7-5-103 through 7-5-107, regulate barking dogs. An ordinance adopted pursuant to this section may not apply to a dog that is owned, kept, or harbored as part of the business of a licensed veterinarian, animal boarding facility, or agricultural or livestock operation.

History: En. Sec. 1, Ch. 238, L. 1999.

7-23-2111. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 6, Ch. 280, L. 1959; R.C.M. 1947, 15-4606.

7-23-2112. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2113. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 7, Ch. 280. L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2114. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2115. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 8, Ch. 280, L. 1959; R.C.M. 1947, 16-4608.

7-23-2116. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Secs. 9, 10, Ch. 280, L. 1959; R.C.M. 1947, 16-4609, 16-4610.

7-23-2117. Repealed. Sec. 3, Ch. 208, L. 1979.

History: En. Sec. 11, Ch. 280, L. 1959; R.C.M. 1947, 16-4611.

Parts 22 through 40 reserved

Part 41

Municipal Control and Protection of Domestic Animals

Part Cross-References

Animals unlawfully running at large, Title 81, ch. 4, part 2.

7-23-4101. Control of animals running at large. The city or town council has power to regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs or other animals and to authorize the impounding and sale thereof if found at large contrary to ordinances.

History: En. Subd. 36, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.35, R.C.M. 1935; R.C.M. 1947, 11-938.

Cross-References

Swine, sheep, and goats running at large, 81-4-201.

7-23-4102. Licensing of dogs. The city or town council has power to license the keeping of dogs and to provide for the killing or destruction thereof if found running at large without license.

History: En. Subd. 37, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.36, R.C.M. 1935; R.C.M. 1947, 11-939.

Cross-References

General powers of Municipal Council, 7-5-4101.

7-23-4103. Relation of municipal dog license tags to other laws. Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with parts 1 and 21 and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog constitutes compliance with the licensing provisions of parts 1 and 21.

History: En. Sec. 4, Ch. 280, L. 1959; R.C.M. 1947, 16-4604.

7-23-4104. Cruelty to animals. The city or town council has power to prohibit and punish cruelty to animals.

History: En. Subd. 32, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.31, R.C.M. 1935; R.C.M. 1947, 11-934.

Cross-References

General powers of Municipal Council, 7-5-4101.
Cruelty to animals — crime, 45-8-211.

Part 42
Required Spaying or Neutering of Cat or Dog

7-23-4201. Sale or adoption of cat or dog — information required. (1) The following information must be provided by any pet shop operator, humane society, or publicly operated animal shelter or pound that makes a cat or dog available for sale or adoption:

(a) age, sex, and weight of the animal;

(b) breed of the animal;

(c) a record of vaccinations and veterinary care and treatment the animal has received, including, if available, the manufacturer's name and the serial number of the vaccination used; and

(d) a record of surgical sterilization of the animal or notice of the lack of surgical sterilization, as applicable.

(2) The following information must be retained for a period of 2 years and remains confidential unless requested pursuant to an enforcement action or legal proceeding:

(a) if known, the name and address of the breeder of the animal;

(b) if known, the name and address of any person who owned or harbored the animal between its birth and the time of sale or adoption; and

(c) a copy of the import permit and health certificate pertaining to an animal imported from outside Montana.

History: En. Sec. 1, Ch. 426, L. 1997.

7-23-4202. Adoption of cat or dog from humane society, animal shelter, or pound — spay or neuter required — deposit — penalty — exceptions. (1) Except as provided in subsections (6) and (7), a humane society or publicly operated animal shelter or pound may not offer for adoption, sale, or trade any cat or dog that has not been redeemed by the owner unless:

(a) the animal has been spayed or neutered; or

(b) the person to whom the animal is released agrees in writing to have the animal spayed or neutered and a deposit for spaying or neutering the animal has been paid. The deposit must be in an amount determined by the humane society or publicly operated animal shelter or pound to be comparable to the lowest fee for spaying or neutering that is charged by veterinarians in the locale.

(2) Upon payment of the deposit required in subsection (1), the person who is adopting the animal must receive a certificate for spaying or neutering, to be presented to a licensed veterinarian, who shall complete the certificate when the spaying or neutering is done. Upon receipt of the completed certificate verifying that the animal has been spayed or neutered, the humane society or publicly operated animal shelter or pound shall forward the deposit to the veterinarian who performed the procedure.

(3) The deposit must be forfeited if the spaying or neutering is not done:

(a) within 30 days if the cat or dog is more than 6 months old at the time of adoption; or

(b) by the time the animal reaches the age of 6 months if the animal is less than 6 months old at the time of adoption, or within 30 days of the adoption, whichever is longer.

(4) A deposit forfeited pursuant to subsection (3) may be used only for the following purposes:

(a) a public education program designed to prevent the overpopulation of cats and dogs;

(b) a program to spay or neuter cats and dogs; and

(c) costs incurred in the enforcement of this section, including a followup program to ensure that animals adopted from or sold or traded by the humane society or publicly operated animal shelter or pound are spayed or neutered.

(5) Failure to fulfill the terms of an agreement entered into pursuant to subsection (1)(b) may, at the discretion of the county attorney, result in the filing of a misdemeanor charge punishable by a fine of not more than $500.

(6) The provisions of this section do not apply to an animal for which a licensed veterinarian verifies in writing that spaying or neutering would be injurious to the animal's health.

(7) The provisions of this section do not apply when a humane society or publicly operated animal shelter or pound, at its discretion, chooses to accept an adoption fee of not less than $50 from a person who wishes to adopt an animal for breeding purposes.

History: **En. Sec. 2, Ch. 426, L. 1997.**

7-23-4203. Additional spaying or neutering requirements not precluded — cooperative agreements. (1) Humane societies and publicly operated animal shelters and pounds may enter into cooperative agreements with each other and with licensed veterinarians in carrying out the provisions of 7-23-4202.

(2) Section 7-23-4202 does not preclude humane societies and publicly operated animal shelters and pounds from engaging in activities set forth in their charters as long as the activities are not inconsistent with 7-23-4202.

(3) Humane societies and publicly operated animal shelters and pounds may establish spaying and neutering requirements in addition to the requirements set out in 7-23-4202, such as:

(a) shorter timeframes for compliance with spaying and neutering requirements;

(b) arranging an appointment for spaying or neutering with a licensed veterinarian; and

(c) delivering the animal to a licensed veterinarian for surgery prior to releasing the animal to the adopting person.

History: **En. Sec. 3, Ch. 426, L. 1997.**

CHAPTERS 24 THROUGH 30
RESERVED

CHAPTER 31
GENERAL EMERGENCY AND PROTECTIVE SERVICES

Part 1 — Smoke Abatement

7-31-101. Authorization for smoke abatement program.
7-31-102. Petition for smoke abatement program.
7-31-103. Contract for smoke abatement.
7-31-104. Contractor's bond.
7-31-105. Modification of contract.
7-31-106. Authorization for county to issue bonds — election required.
7-31-107. Authorization for municipality to issue bonds — election required.
7-31-108. Notice of election.
7-31-109. Conduct of election.
7-31-110. Effect of election.
7-31-111. Cost of election in case of voter disapproval.
7-31-112. Details relating to bonds.
7-31-113. Disposition of bonds.
7-31-114. Disposition of sale proceeds — sanitary coupon bond fund.
7-31-115. Disbursement of money.
7-31-116. Payment of bonds and other obligations.

Part 2 — Public Safety Communications Officer

7-31-201. Definitions.
7-31-202. Qualifications for public safety communications officers.
7-31-203. Certification of public safety communications officers — suspension or revocation — penalty — notification requirements.

Parts 3 through 20 reserved

Part 21 — General Provisions Affecting Counties

7-31-2101. Authorization to transfer funds for emergency relief.

Parts 22 through 40 reserved

Part 41 — General Provisions Affecting Municipalities

7-31-4101. Board of health.
7-31-4102. Repealed.
7-31-4103. Ditches, drains, and flumes in municipalities.
7-31-4104. Suppression of fraud and immoral publications.

7-31-4105 through 7-31-4109 reserved.
7-31-4110. Restriction of wildlife.

Part 42 — Open Ditches

7-31-4201. Findings and purpose.
7-31-4202. Interpretation of part.
7-31-4203. Open ditch declared nuisance.
7-31-4204. Investigation and remedial measures related to open ditches.
7-31-4205. Procedure to close and fill ditch — notice.
7-31-4206. Procedure to maintain open ditch.
7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches.

Chapter Cross-References

Disaster and emergency services, Title 10, ch. 3.
Emergency medical services, Title 50, ch. 6.

Part 1
Smoke Abatement

Part Cross-References

Air quality, Title 75, ch. 2.

7-31-101. Authorization for smoke abatement program. It shall be lawful for any county or incorporated city or town in any county in this state where injurious and unhealthy smoke and fumes exist to make contracts for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions provided in this part.

History: En. Sec. 1, p. 142, L. 1893; re-en. Sec. 4831, Pol. C. 1895; re-en. Sec. 3430, Rev. C. 1907; re-en. Sec. 5289, R.C.M. 1921; re-en. Sec. 5289, R.C.M. 1935; R.C.M. 1947, 11-2501.

Cross-References

Debt management — general provisions related to local governments, Title 7, ch. 7, part 1.
Local air pollution control programs, 75-2-301.

7-31-102. Petition for smoke abatement program. Wherever a petition is presented to the board of county commissioners of any county or to the council of any incorporated city or town, signed by at least 100 of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this part, it shall be the duty of the board of county commissioners of such county or the council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done.

History: En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; R.C.M. 1947, 11-2502(part).

Cross-References

Petitions, 7-5-133 through 7-5-135.

7-31-103. Contract for smoke abatement. (1) The smoke abatement contract shall:

(a) be entered into and made with such person or persons or corporation or corporations and contain such provisions and conditions as will, in the opinion of the board of county commissioners or the council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid; and

(b) take effect and be in force as provided in this part.

(2) Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination.

History: (1)En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; Sec. 11-2502, R.C.M. 1947; (2)En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5291, R.C.M. 1935; Sec. 11-5203, R.C.M. 1947; R.C.M. 1947, 11-2502(part), 11-2503(part).

Cross-References

County contracts, Title 7, ch. 5, part 23.
Municipal contracts, Title 7, ch. 5, part 43.
Contracts, Title 28, ch. 2.

7-31-104. Contractor's bond. The person or persons or corporation or corporations with whom said contract shall have been made shall execute their or its bond or bonds, with sufficient sureties, to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part. The terms, conditions, and penalty of the surety bond shall be approved by the contracting board or council. The surety bond or bonds shall be in full force and effect upon the ratification of the contract as provided in this part, the condition of which shall be expressed in the contract.

History: En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5219, R.C.M. 1935; R.C.M. 1947, 11-2503(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

7-31-105. Modification of contract. In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof and such modifications or changes shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county or the judge or judges of the district in which such county or incorporated city or town is included and, when so approved, shall have the same force and effect as if originally contained therein.

History: En. Sec. 10, p. 146, L. 1893; re-en. Sec. 4840, Pol. C. 1895; re-en. Sec. 3439, Rev. C. 1907; re-en. Sec. 5298, R.C.M. 1921; re-en. Sec. 5298, R.C.M. 1935; R.C.M. 1947, 11-2510.

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

7-31-106. Authorization for county to issue bonds — election required. (1) If the petition is presented to the board of county commissioners, the board shall, for the purpose of raising money to meet the payments under the terms and conditions of the contract and other necessary and proper expenses for the contract and for the approval or disapproval of the petition:

(a) ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) submit, after ascertaining the aggregate indebtedness, to the electors of the county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the contract. The election must be held in conjunction with a regular or primary election.

(2) The amount of the bonds authorized by this section may not exceed the debt limitation established in 7-7-2203 prior to the issuance of the bonds.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part); amd. Sec. 56, Ch. 614, L. 1981; amd. Sec. 58, Ch. 387, L. 1995; amd. Sec. 22, Ch. 29, L. 2001.

Cross-References

Purposes for which general obligation bonds of a county may be issued, 7-7-2201.

7-31-107. Authorization for municipality to issue bonds — election required. (1) If the petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of the contract and other necessary and proper expenses for the contract and for the approval or disapproval of the petition, shall:

(a) ascertain, within 30 days after submission of the petition, the aggregate indebtedness of the city or town; and

(b) submit, after ascertaining the aggregate indebtedness, to the electors of the city or town the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the contract. The election must be held in conjunction with a regular or primary election.

(2) The amount of the bonds authorized by this section may not exceed 0.9% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town, inclusive of the existing indebtedness of the city or town, as ascertained in the manner provided in this part.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part); amd. Sec. 57, Ch. 614, L. 1981; amd. Sec. 59, Ch. 387, L. 1995; amd. Sec. 23, Ch. 29, L. 2001.

Cross-References

Municipal revenue bonds, Title 7, ch. 7, part 44.

7-31-108. Notice of election. (1) The board of county commissioners of the county in which such election is to be held or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating:

(a) the objects thereof;

(b) the time and place of holding the same;

(c) such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them;

(d) the amount of bonds proposed to be issued, when payable, and the interest they are to bear; and

(e) a description of the tickets or ballots to be used.

(2) The notice shall be given at least three times a week for at least 6 consecutive weeks next preceding such election in some newspaper printed and published and circulated in the county, city, or town, as the case may be, in which such election shall be held and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: En. Sec. 6, p. 144, L. 1893; re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. 3435, Rev. C. 1907; re-en. Sec. 5294, R.C.M. 1921; re-en. Sec. 5294, R.C.M. 1935; R.C.M. 1947, 11-2506.

Cross-References

Petition and election required for issuance of certain bonds, 7-7-2223.

Notice of election, 7-7-2229.

7-31-109. Conduct of election. (1) The vote upon a proposition under this part must be at an election for that purpose to be held, conducted, and counted and with results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise provided in this section. The election must be held in conjunction with a regular or primary election.

(2) The proposition must be submitted upon printed tickets or ballots, upon each of which is printed the following: "For the contract and bonds" and "Against the contract and bonds". The elector shall vote by a cross opposite one statement.

(3) No registration under the election laws of this state is required for the purposes of the election, and the registration from the last election governs and controls for the purpose of the election to be held under this part.

History: (1), (2)En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; Sec. 11-2505, R.C.M. 1947; (3)En. Sec. 11, p. 146, L. 1893; re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. 3440, Rev. C. 1907; re-en. Sec. 5299, R.C.M. 1921; re-en. Sec. 5299, R.C.M. 1935; Sec. 11-2511, R.C.M. 1947; R.C.M. 1947, 11-2505(part), 11-2511; amd. Sec. 60, Ch. 387, L. 1995.

Cross-References

Time of holding election on question of issuing bonds, 7-7-2228.

7-31-110. Effect of election. (1) If a majority of the votes cast were for the contract and bonds, then the contract is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If there was a tie vote or a majority of the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment are void and the bonds shall not be issued.

History: En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; R.C.M. 1947, 11-2505(part); amd. Sec. 1, Ch. 263, L. 1979.

Cross-References

Percentage of electors required to authorize bond issue, 7-7-2237.

7-31-111. Cost of election in case of voter disapproval. If the proposition submitted to the voters pursuant to 7-31-106 or 7-31-107 is disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part).

7-31-112. Details relating to bonds. (1) The bonds issued upon the conditions and under the provisions of this part must:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the bonds;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at a place in the discretion of the board or council issuing the bonds;

(e) bear interest as provided in 17-5-102, payable 30 years after the date of issuance, with the privilege of paying the interest at any time after 5 years from that date. The interest is payable semiannually at the place where the principal is payable, and interest coupons must be attached to the bonds.

(2) If the bonds and coupons are issued by a county, they must be signed by the presiding officer of the board of county commissioners of that county and attested to by the county clerk and recorder and the clerk's seal must be attached to the bonds and coupons. If the bonds and coupons are issued by any incorporated city or town, they must be signed by the mayor and attested to by the city or town clerk and the clerk's seal must be attached to the bonds and coupons.

History: En. Sec. 7, p. 145, L. 1893; re-en. Sec. 4837, Pol. C. 1895; re-en. Sec. 3436, Rev. C. 1907; re-en. Sec. 5295, R.C.M. 1921; re-en. Sec. 5295, R.C.M. 1935; R.C.M. 1947, 11-2507; amd. Sec. 8, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 26, Ch. 370, L. 1987; amd. Sec. 670, Ch. 61, L. 2007.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal revenue bonds, Title 7, ch. 7, part 44.

7-31-113. Disposition of bonds. (1) The board of county commissioners or council, as the case may be:

(a) may provide by said contract for the delivery of said bonds or any part thereof at their face value, upon the terms and conditions provided in said contract; or

(b) may sell and dispose of the same or any part thereof to raise funds to carry out said contract and use such funds for that purpose and for the payment of any expert or experts or any incidental expenses proper and necessary in and about said contract and the carrying out of the same.

(2) In the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation which may be printed and published in each county in the state and also by publication in at least three newspapers of general circulation printed and published in the cities of Boston and New York. Such notice shall be published at least once a week and shall contain, in substance, a description of said bonds as set out in 7-31-112.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

Cross-References

Delivery of bonds, 7-7-2259.

Sale of bonds, 7-7-4433.

7-31-114. Disposition of sale proceeds — sanitary coupon bond fund. The proceeds of the sales of bonds:

(1) shall be paid over to the county treasurer, the city treasurer, or the town clerk, as the case may be, and kept as a separate and independent fund for the purposes herein provided, to be known as the sanitary coupon bond fund; and

(2) shall be deposited and kept in such a manner and at such bank or banks as the board of county commissioners of the county or council of the city or town owning such funds may direct.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

Cross-References

Counties — disposition of sale proceeds, 7-7-2260.

Municipalities — sale of bonds, 7-7-4433.

7-31-115. Disbursement of money. Money in the sanitary coupon bond fund shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

Cross-References

County warrants, Title 7, ch. 6, part 26.
Municipal warrants, Title 7, ch. 6, part 45.

7-31-116. Payment of bonds and other obligations. (1) The faith of the county or incorporated city or town issuing bonds under the provisions of this part is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same.

(2) The board of county commissioners of the county or council of the incorporated city or town issuing said bonds:

(a) shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, which shall become a lien and be collected as other taxes; and

(b) shall form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall be kept as a separate fund.

(3) All bonds, coupons, orders, and warrants issued and drawn under the provisions of this part shall be promptly paid, registered, and entered in books kept for that purpose, with correct and proper entries made in respect thereto, and the same, when paid, shall be canceled and preserved, with proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: En. Sec. 9, p. 146, L. 1893; re-en. Sec. 4839, Pol. C. 1895; re-en. Sec. 3438, Rev. C. 1907; re-en. Sec. 5297, R.C.M. 1921; re-en. Sec. 5297, R.C.M. 1935; R.C.M. 1947, 11-2509.

Cross-References

Counties — payment of principal and interest, 7-7-2262.
Municipalities — payment of principal and interest, 7-7-4262.

Part 2
Public Safety Communications Officer

7-31-201. Definitions. As used in this part, the following definitions apply:

(1) "Council" means the Montana public safety officer standards and training council provided for in 2-15-2029.

(2) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

History: En. Sec. 1, Ch. 58, L. 1991; amd. Sec. 7, Ch. 506, L. 2007.

7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(4) may not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(5) must be of good moral character, as determined by a thorough background investigation;

(6) must be a high school graduate or have passed the general educational development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and

(7) must meet any additional qualifications established by the council.

History: En. Sec. 2, Ch. 58, L. 1991; amd. Sec. 671, Ch. 61, L. 2007; amd. Sec. 8, Ch. 506, L. 2007.

7-31-203. Certification of public safety communications officers — suspension or revocation — penalty — notification requirements. (1) A local government shall require that a person, unless exempt under subsection (3), appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the council as a public safety communications officer.

(2) (a) The council shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(b) The certification standards must contain a requirement that an applicant for certification attend and successfully complete a basic course for public safety communications officers conducted by the Montana law enforcement academy within 1 year of date of hire.

(3) (a) A person certified by the council prior to July 1, 2001, and employed as a public safety communications officer as of July 1, 2001, is not subject to the requirement of subsection (2)(b).

(b) A person under permanent appointment as a public safety communications officer as of July 1, 2001, is not subject to the requirements of subsection (2).

(4) A public safety communications officer who has successfully met the certification standards set by the council, or who is exempt from certain certification standards pursuant to subsection (3), who has met the qualification requirements in 7-31-202, and who has completed a 6-month probationary term and 1 year of employment must, upon application to the council, be issued a basic public safety communications officer certificate.

(5) Failure by any person appointed as a public safety communications officer after July 1, 2001, unless exempt under the provisions of subsection (3), to meet the minimum requirements in 7-31-202 or to satisfy the certification requirements provided for in subsection (2) of this section is cause to terminate that person's employment as a public safety communications officer.

(6) It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the council to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine in an amount not to exceed $500, or both.

(7) Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the council by the employing authority.

History: En. Sec. 3, Ch. 58, L. 1991; amd. Sec. 1, Ch. 437, L. 1993; amd. Sec. 1, Ch. 88, L. 2001; amd. Sec. 9, Ch. 506, L. 2007.

Parts 3 through 20 reserved

Part 21
General Provisions Affecting Counties

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

7-31-2101. Authorization to transfer funds for emergency relief. Whenever the governor issues a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants caused by famine, destitution, conflagration, or other public calamity, the board of county commissioners of the county may transfer to the proper fund to be used for purposes of relief any money in any other fund or funds of the county, but money belonging to any bond sinking or interest fund or any school fund may not be transferred. The governor shall in the proclamation state the facts upon which the emergency is declared and shall specifically limit the time during which the transfers may be made.

History: En. Sec. 1, Ch. 43, L. 1933; re-en. Sec. 4470.3, R.C.M. 1935; R.C.M. 1947, 16-1107; amd. Sec. 672, Ch. 61, L. 2007.

Cross-References

Emergencies — intergovernmental cooperation, Title 10, ch. 3, part 2.

Local and interjurisdictional planning and execution, Title 10, ch. 3, part 4.

Parts 22 through 40 reserved

Part 41
General Provisions Affecting Municipalities

7-31-4101. Board of health. The city or town council has power to provide for a board of health and to prescribe its powers and duties and, when such board of health is provided, for the same to have jurisdiction within the city or town limits and within 3 miles thereof.

History: En. Subd. 44, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.43, R.C.M. 1935; R.C.M. 1947, 11-946.

Cross-References

Local boards of health, Title 50, ch. 2, part 1.

7-31-4102. Repealed. Sec. 37, Ch. 291, L. 2009.

History: En. Subd. 61, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.60, R.C.M. 1935; R.C.M. 1947, 11-963; amd. Sec. 673, Ch. 61, L. 2007.

7-31-4103. Ditches, drains, and flumes in municipalities. The city or town council has power to regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: En. Subd. 82, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.81, R.C.M. 1935; R.C.M. 1947, 11-984.

Cross-References

General powers of Municipal Council, 7-5-4101.

7-31-4104. Suppression of fraud and immoral publications. The city or town council has power to suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property and to prohibit the same or exhibition of immoral publications, prints, pictures, or illustrations.

History: En. Subd. 20, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.19, R.C.M. 1935; R.C.M. 1947, 11-922.

Cross-References

Control of disturbances of the peace, 7-32-4302.
Kinds of fraud, 28-2-404.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Obscenity, 45-8-201.

7-31-4105 through 7-31-4109 reserved.

7-31-4110. Restriction of wildlife. (1) A city or town may adopt a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the city or town shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the city or town may implement the plan as approved or as approved with conditions.

(2) The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.

History: En. Sec. 1, Ch. 466, L. 2003; amd. Sec. 3, Ch. 261, L. 2005.

Part 42
Open Ditches

Part Cross-References

Nuisances, Title 27, ch. 30.

7-31-4201. Findings and purpose. (1) The legislature declares that the control of ditchwater in inhabited areas of Montana is affected with the public interest.

(2) The purpose of this part is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).

Cross-References

Distinction between public and private nuisances, 27-30-102.

7-31-4202. Interpretation of part. (1) This part shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace, and safety of the people of Montana. This part shall be construed merely as a regulation in the public interest so that the diversion, transportation, and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this part.

(2) Nothing in this part shall be construed as intending to effectuate the abandonment of any valid water right.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).

Cross-References

Distinction between public and private nuisances, 27-30-102.

7-31-4203. Open ditch declared nuisance. Notwithstanding any provision contained in Title 85 or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance if such city or town, acting through its governing body declares it to be such nuisance.

History: En. Sec. 2, Ch. 63, L. 1961; amd. Sec. 2, Ch. 306, L. 1969; R.C.M. 1947, 11-4002.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-31-4204. Investigation and remedial measures related to open ditches. The governing body of the city or town is hereby given the power to:

(1) investigate the dangerous condition of such ditches within the corporate limits and declare any such ditch a public nuisance; and

(2) determine the measures necessary to remove the danger and public nuisance, including fencing or the use of culverts or other protective devices, based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961; amd. Sec. 3, Ch. 306, L. 1969; R.C.M. 1947, 11-4003.

Cross-References

Remedies for public nuisances, 27-30-202.

7-31-4205. Procedure to close and fill ditch — notice. (1) When a public nuisance has been declared, as provided in this part, the city or town shall give public notice for at least 60 days to owners of the ditch and of any water rights affected that such ditch has been declared a public nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open.

(2) Such notice shall include publication once each week for at least 8 successive weeks in an established newspaper published within the city or town if one exists or, in its absence, in the official county newspaper.

History: En. Sec. 4, Ch. 63, L. 1961; R.C.M. 1947, 11-4004.

Cross-References

County printing contract, 18-7-411.

Abatement of public nuisance by public body or officer or injured party, 27-30-204.

7-31-4206. Procedure to maintain open ditch. (1) If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, the person shall notify the city or town before the expiration of the 60-day period that the person wishes to continue the use of the water within the city or town and that the person, individually or with others, will provide protective devices as ordered by the city or town.

(2) If notice is given, the person or persons claiming the water right or rights has a period not to exceed 6 months to remove the public nuisance in the manner ordered by the city or town.

(3) If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided or if it does not meet specifications required by the city or town, the city or town may designate the ditch abandoned and order it closed or filled when the 6-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961; R.C.M. 1947, 11-4005; amd. Sec. 674, Ch. 61, L. 2007.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches. (1) This part does not apply to ditches carrying water used for commercial irrigation purposes.

(2) However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water shall not be included in any special improvement district under this part for the purpose of assessment to

support the special improvement district for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961; amd. Sec. 4, Ch. 306, L. 1969; R.C.M. 1947, 11-4006.

Cross-References

Irrigation districts, Title 85, ch. 7.

CHAPTER 32
LAW ENFORCEMENT

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Part 23 — Powers of County Commissioners Related to Law Enforcement

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Part 41 — Municipal Police Force

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7-32-4121. Action to recover salary.
7-32-4122. Contributions for group life insurance and representation.
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7-32-4124 through 7-32-4130 reserved.
7-32-4131. Compensation and allowance for sick or injured police officers.
7-32-4132. Payment of partial salary amount of officer injured in performance of duty.
7-32-4133. Repealed.
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7-32-4137. Effect on probationary status.
7-32-4138. Subrogation.
7-32-4139. Repealed.
7-32-4140 through 7-32-4150 reserved.
7-32-4151. Police commission required in all cities and some towns.
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7-32-4154. Role of police commission in examination of applicants for police force.
7-32-4155. Role of police commission in hearing and deciding appeals brought by police officers.
7-32-4156. Appeals to be in writing.
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7-32-4158. Police commission hearings open to public.
7-32-4159. Subpoena authority of police commission.
7-32-4160. Decision by police commission.
7-32-4161. Enforcement of decision.
7-32-4162. Repealed.
7-32-4163. Repealed.
7-32-4164. Right to appeal.

Part 42 — Municipal Detention Centers

7-32-4201. Municipal detention centers authorized.
7-32-4202. Repealed.
7-32-4203. Repealed.

Part 43 — Powers of Municipal Council Related to Law Enforcement

7-32-4301. Regulations governing arrest authorized.
7-32-4302. Control of disturbances of the peace.
7-32-4303. Control of shoplifting.
7-32-4304. Control of disorderly conduct.
7-32-4305. Repealed.
7-32-4306 through 7-32-4310 reserved.
7-32-4311. Maintenance of police telegraph.

Chapter Cross-References

Private investigators and patrol officers, Title 37, ch. 60.
Law Enforcement, Title 44.
Crimes, Title 45.
Criminal Procedure, Title 46.

Part 1
Department of Public Safety

Part Cross-References

Department of Public Safety, 7-3-4464.
Automatic security alarm system — permission of chief law enforcement officer, 37-60-408.

7-32-101. Department of public safety authorized. In counties other than first- and second-class counties, on agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established a department of public safety in lieu of a police department and a sheriff's office.

History: En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; R.C.M. 1947, 16-2726(part).

Cross-References

Classification of counties, 7-1-2111.

7-32-102. Director of department of public safety. The director of the department of public safety is the sheriff, who may be elected or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. An appointed director shall receive a majority of the votes of the public safety commission members voting on the question of appointment.

History: En. Sec. 2, Ch. 347, L. 1973; amd. Sec. 6, Ch. 146, L. 1975; R.C.M. 1947, 16-2727; amd. Sec. 675, Ch. 61, L. 2007.

Cross-References

Duties of Sheriff, 7-32-2121.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-32-103. Structure of department of public safety — duties — restrictions on evaluations. (1) The director has the powers and shall perform the duties conferred on and required of sheriffs, police officers, and chiefs of police, except in cases involving the discharge or termination of employment of subordinate employees.

(2) Officers and patrol officers of the city or town police department and deputies of the county sheriff's office are subordinate to the director and have the power and shall perform the duties conferred on and required of police officers and patrol officers in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance.

(3) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating officers.

History: En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 244, L. 2007.

Cross-References

Duties of Sheriff, 7-32-2121.
Supervision of police department, 7-32-4103.
Duties of Chief of Police, 7-32-4105.

7-32-104. Salaries. The provisions of 7-4-2503 notwithstanding, the salaries of the director and employees of the department of public safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners. The salary of the director may not be less than that specified for the sheriff in 7-4-2503. The salaries of employees may not be less than the salaries specified in 7-4-2508 and 7-4-2510; however, employees are not required to be paid any fixed percentage of the director's or sheriff's salary.

History: **En. Sec. 4, Ch. 347, L. 1973; amd. Sec. 11, Ch. 146, L. 1975; R.C.M. 1947, 16-2729; amd. Sec. 1, Ch. 256, L. 1985.**

Cross-References

Minimum wage of police in first- and second-class cities, 7-32-4116.

7-32-105. Officers' status for purpose of enforcing and executing court orders. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of ...." and each police officer, patrol officer, and deputy sheriff shall be known and designated as "deputy sheriff".

History: **En. Sec. 5, Ch. 347, L. 1973; R.C.M. 1947, 16-2730; amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Duties of Sheriff, 7-32-2121.
Fees of Sheriff, 7-32-2141.
Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

7-32-106. Meaning of terms employee and subordinate employee. "Employee" or "subordinate employee" means but is not limited to any officer or patrol officer of the city or town police department, any deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(1); amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.
Municipal police force, Title 7, ch. 32, part 41.

7-32-107. Hearing required for discharge of subordinate employee. In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this part, except that those employees covered under collective bargaining agreements as provided for in Title 39, chapter 31 shall be entitled to use any grievance procedure provided for within the collective bargaining agreement.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(2).**

Cross-References

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

7-32-108. Hearing procedure for employee discharged by appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide the employee with a written statement, subscribed and sworn to by the director, setting forth the cause or causes for the discharge or termination of employment.

(2) Within 30 days from the date of discharge or termination of employment, the employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. The employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings, and the records are a matter of public record. For the purpose of keeping a record of the proceedings, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. The person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission has the power, in all cases in which a majority of the commission members find the charges not proven, to reinstate any employee to the same position previously held and at the same salary received prior to discharge or termination of employment.

(5) In all cases in which a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county in which the employee was employed. The appeal must be initiated within 60 days of the ruling of the commission.

History: **En. 16-2728.1 by Sec. 8, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.1; amd. Sec. 676, Ch. 61, L. 2007.**

Cross-References

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.
Reinstatement of Deputy Sheriff, 7-32-2110.
Procedure for reinstatement on police force, 7-32-4110.
Wrongful Discharge From Employment Act, Title 39, ch. 2, part 9.

7-32-109. Hearing procedure for employee discharged by elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission in the manner provided in 7-32-108.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement, subscribed and sworn to by the director, setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven but the elected director refuses to reinstate the discharged or terminated employee or cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision in the manner provided in 7-32-108.

History: **En. 16-2728.2 by Sec. 9, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.2.**

Cross-References

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.
Reinstatement of Deputy Sheriff, 7-32-2110.
Procedure for reinstatement on police force, 7-32-4110.

7-32-110. Reinstatement of discharged employee who prevails in district court. If an employee prevails in an appeal to the district court, the employee is entitled to be reinstated to the same position previously held and at the same salary received prior to discharge or termination by the director.

History: **En. 16-2728.3 by Sec. 10, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.3; amd. Sec. 677, Ch. 61, L. 2007.**

Cross-References

Reinstatement of Deputy Sheriff, 7-32-2110.
Procedure for reinstatement on police force, 7-32-4110.

7-32-111 through 7-32-114 reserved.

7-32-115. Work period in lieu of workweek — overtime compensation. (1) (a) A department of public safety may establish a work period other than the workweek provided in 7-32-2111 or 39-3-405 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any employee who works in excess of the employee's regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by the board of county commissioners.

History: **En. Sec. 2, Ch. 256, L. 1985; amd. Sec. 678, Ch. 61, L. 2007.**

Cross-References

Minimum wage and overtime compensation, Title 39, ch. 3, part 4.
Hours — state and municipal governments, 39-4-107.

7-32-116 through 7-32-120 reserved.

7-32-121. Public safety commission. (1) The department of public safety shall be under the supervision of a public safety commission.

(2) The commission shall consist of three, five, or seven members. Each member of the commission shall serve a 4-year term and shall be appointed as provided in 7-32-121 through 7-32-124.

(3) No commission member may be an official of any unit of local government.

History: (1), (2)En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; Sec. 16-2726, R.C.M. 1947; (3)En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; Sec. 69-2726.1, R.C.M. 1947; R.C.M. 1947, 16-2726(part), 16-2726.1(5).

7-32-122. Appointment to three-member public safety commission. (1) Upon the creation of a three-member commission:

(a) one member must be appointed by the legislative body of the city or town;

(b) one member must be appointed by the board of county commissioners; and

(c) one member must be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question.

(3) Initially, one commission member shall serve a 4-year term and two commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of the member's term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(1); amd. Sec. 679, Ch. 61, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-123. Appointment to five-member public safety commission. (1) Upon the creation of a five-member commission:

(a) two members must be appointed by the legislative body of the city or town;

(b) two members must be appointed by the board of county commissioners; and

(c) one member must be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a five-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question.

(3) Initially, two commission members shall each serve a 4-year term and three commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of the member's term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(2); amd. Sec. 680, Ch. 61, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-124. Appointment to seven-member public safety commission. (1) Upon the creation of a seven-member commission:

(a) three members must be appointed by the legislative body of the city or town;

(b) three members must be appointed by the board of county commissioners; and

(c) one member must be appointed by the members of the board of county commissioners and the members of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a seven-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question.

(3) Initially, three commission members shall each serve a 4-year term and four commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of the member's term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(3); amd. Sec. 681, Ch. 61, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-125. Residency requirements for public safety commissioners. Each commission member shall reside at the time of appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(4); amd. Sec. 682, Ch. 61, L. 2007.

Cross-References

Residence — rules for determining, 1-1-215.

7-32-126. Vacancies and succession. (1) In case of a vacancy for any cause, a new member must be appointed in the same manner as the person replaced. The appointee shall serve out the unexpired portion of the term of the person replaced.

(2) The successor for a commission member whose term has expired must be appointed in the same manner used to appoint the commission member that the person succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of a term.

History: En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(1) thru (3); amd. Sec. 683, Ch. 61, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-127. Organization of public safety commission. (1) Not later than 60 days after the commission is authorized, the members of the commission shall meet and organize at a time that must be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town must be designated by the commission to serve as temporary presiding officer. As its first official act, the commission members shall select a presiding officer and vice presiding officer from the members of the commission.

(3) The presiding officer of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the presiding officer, the vice presiding officer shall preside over all meetings and hearings of the commission.

History: En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(1) thru (3); amd. Sec. 684, Ch. 61, L. 2007.

7-32-128. Meetings. Meetings of the commission must be held upon call of the presiding officer, the vice presiding officer in the absence or inability of the presiding officer, or a majority of the commission members. Hearings in all cases involving employee discharge or termination must be held upon request of the employee discharged or terminated.

History: En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(4); amd. Sec. 685, Ch. 61, L. 2007.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

Role of Police Commission in hearing and deciding charges against police officers, 7-32-4155.

7-32-129. Compensation and expenses. Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

History: En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(4).

Cross-References

Mileage allowance for County Commissioners — expenses, 7-4-2108.

Part 2
Reserve and Auxiliary Officers

7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "Council" means the Montana public safety officer standards and training council established in 2-15-2029.

(3) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(4) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(5) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210.

(6) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.

(7) "Special services officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform functions, other than general law enforcement duties, that require specialized skills, training, and qualifications, who may be required to train with a firearm, and who may carry a firearm while on assigned duty as provided in 7-32-239.

History: En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part); amd. Sec. 251, Ch. 800, L. 1991; amd. Sec. 3, Ch. 82, L. 1999; amd. Sec. 10, Ch. 506, L. 2007.

7-32-202. Prohibition on participation in certain pension and retirement systems. (1) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(2) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(9), 11-1858(3).

Cross-References

Highway patrol officers' retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Police retirement — statewide plan, Title 19, ch. 9.
Police retirement — local funds, Title 19, ch. 19.

7-32-203. Provision of workers' compensation coverage. (1) Each law enforcement agency that utilizes reserve officers or special services officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(10), 11-1858(4); amd. Sec. 1, Ch. 92, L. 1987; amd. Sec. 4, Ch. 82, L. 1999.

Cross-References

Workers' compensation, Title 39, ch. 71.

7-32-204 through 7-32-210 reserved.

7-32-211. Reserve officers authorized. A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

Cross-References

Qualifications of law enforcement officers, Title 7, ch. 32, part 3.

7-32-212. Prohibition on reduction of full-time officers. A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(11).

7-32-213. Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person:

(1) must have resided in the state continuously for at least 1 year prior to the appointment and in the county where the appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) must be a citizen of the United States;

(3) must be at least 18 years of age;

(4) must be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) may not have been convicted of a crime for which the person could have been imprisoned in a federal penitentiary or state prison;

(6) must be of good moral character as determined by a thorough background investigation;

(7) must be a graduate of an accredited high school or the equivalent;

(8) must be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) must possess a valid Montana driver's license.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part); amd. Sec. 686, Ch. 61, L. 2007.

Cross-References

Residence — rules for determining, 1-1-215.
Citizens defined, 1-1-402.
Drivers' licensing provisions, Title 61, ch. 5, part 1.

7-32-214. Basic training program required. (1) A reserve officer may not be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program that must include but need not be limited to the following course content:

(a) introduction and orientation—1 hour;
(b) police ethics and professionalism—1 hour;
(c) criminal law—4 hours;
(d) laws of arrest—4 hours;
(e) criminal evidence—4 hours;
(f) administration of criminal law—2 hours;
(g) communications, reports, and records—2 hours;
(h) crime investigations—3 hours;
(i) interviews and interrogations—2 hours;
(j) patrol procedures—6 hours;
(k) crisis intervention—4 hours;
(l) police human and community relations—3 hours;
(m) juvenile procedures—2 hours;
(n) defensive tactics—4 hours;
(o) crowd control tactics—4 hours;
(p) firearms training—30 hours;
(q) first aid—10 hours; and
(r) examination—2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the council.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(2),(3); amd. Sec. 11, Ch. 506, L. 2007.

Cross-References

Board of Crime Control — functions, 44-4-301.
Montana Law Enforcement Academy, Title 44, ch. 10.

7-32-215. Reserve manual required. The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

History: En. 11-1853 by Sec. 3, Ch. 85, L. 1977; R.C.M. 1947, 11-1857.

7-32-216. Limitations on activities of reserve officers. (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) A reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

Cross-References

Restrictions on activities of police officers, 7-32-4114.

7-32-217. Restrictions on carrying weapons. No reserve officer may carry a weapon:

(1) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(2) until authorized by the chief law enforcement administrator to carry a weapon.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(7).

Cross-References

Montana Law Enforcement Academy, Title 44, ch. 10.

7-32-218. Status of reserve officer upon activation. A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(8).

7-32-219. Reserve force coordinator. The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

7-32-220. Appointment of reserve officer to full-time position. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.

Appointment to police force, 7-32-4108.

7-32-221. Termination of reserve officers. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(12).

Cross-References

Deputy Sheriffs — written notice of termination of employment required, 7-32-2108.

Police — appeals to be in writing, 7-32-4156.

7-32-222. Reserve officer change in residency. A reserve officer may change permanent residency to another county and remain a member of the reserve officer unit to which the reserve officer was appointed provided that:

(1) the statutory basic training requirements have been met;

(2) the probationary period established by the law enforcement agency is completed; and

(3) approval for continuing membership is granted by the chief law enforcement administrator controlling the reserve unit.

History: En. Sec. 1, Ch. 82, L. 1999.

7-32-223 through 7-32-230 reserved.

7-32-231. Auxiliary officers authorized. A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

History: En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(part).

Cross-References

Duties of Sheriff, 7-32-2121.

Duties of Chief of Police, 7-32-4105.

7-32-232. Role of auxiliary officers. (1) Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer.

(2) No auxiliary officer may carry a weapon while on assigned duty.

History: En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(1)(a), (b), (2).

7-32-233. Limitation on arrest authority of auxiliary officer. An auxiliary officer has only the arrest authority granted a private person in 46-6-502.

History: En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part); amd. Sec. 252, Ch. 800, L. 1991.

7-32-234. Exceptions. Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, to special services officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 7-32-2121(6).

History: En. 11-1855 by Sec. 5, Ch. 85, L. 1977; R.C.M. 1947, 11-1859; amd. Sec. 5, Ch. 82, L. 1999.

7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding. (1) A county may establish or recognize one or more search and rescue units within the county.

(2) (a) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(b) A county sheriff or the sheriff's designee may authorize the participation of members of the civil air patrol, including cadets under 18 years of age, in search and rescue operations.

(3) Subject to 15-10-420, a county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax on the taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held as provided in 15-10-425.

History: En. Sec. 2, Ch. 42, L. 1981; amd. Sec. 1, Ch. 280, L. 1985; amd. Sec. 1, Ch. 353, L. 1991; amd. Sec. 61, Ch. 387, L. 1995; amd. Sec. 23, Ch. 495, L. 2001; amd. Sec. 77, Ch. 574, L. 2001; amd. Sec. 1, Ch. 186, L. 2007.

7-32-236 through 7-32-238 reserved.

7-32-239. Special services officers — authorization — role. (1) Special services officers:

(a) are subordinate to full-time law enforcement officers;

(b) must be supervised by a law enforcement officer;

(c) shall complete specialized training and must possess specialized skills required by the chief law enforcement administrator; and

(d) may be authorized by the chief law enforcement administrator to carry a weapon while on assigned duty only upon successful completion of training in the laws and procedures governing use of force and upon demonstration of proficiency with that weapon.

(2) A local government may authorize special services officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

History: En. Sec. 2, Ch. 82, L. 1999.

7-32-240. Certification of peace officer who leaves full-time or part-time employment. A peace officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer. If 36 or more months have passed since the peace officer's last full-time or part-time employment and the peace officer returns to full-time or part-time employment, the peace officer shall, upon return to full-time or part-time employment, comply with 7-32-303(5)(c).

History: En. Sec. 1, Ch. 68, L. 1997.

Part 3
Qualifications of Law Enforcement Officers

Part Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.
Qualifications of police officers, 7-32-4112.

7-32-301. Residency requirements. A sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or police officers in this state to preserve the public peace and prevent or quell public disturbance may not appoint as a special deputy, marshal, or police officer any person who has not resided continuously in this state for a period of at least 1 year and in the county where the appointment is made for a period of at least 6 months prior to the date of appointment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 687, Ch. 61, L. 2007.

Cross-References

Residence — rules for determining, 1-1-215.

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or police officers may in its discretion waive residency requirements.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 688, Ch. 61, L. 2007.

Cross-References

Duties of Sheriff, 7-32-2121.
Supervision of police department, 7-32-4103.

7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general educational development test and been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice of the event must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace officer's course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana and whose last date of employment as a peace officer or member of the military law enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully completing a basic equivalency course administered by the Montana law enforcement academy. The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer fails the basic equivalency course, the peace officer shall complete the appropriate basic equivalency course within 120 days of the date of the failure of the equivalency course.

(6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the Montana public safety officer standards and training council to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 1, Ch. 191, L.

1983; amd. Sec. 1, Ch. 714, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 9, Ch. 662, L. 1991; amd. Sec. 2, Ch. 437, L. 1993; amd. Sec. 12, Ch. 506, L. 2007; amd. Sec. 13, Ch. 2, L. 2009; amd. Sec. 1, Ch. 75, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 2 in (2)(f) near beginning after "general" substituted "educational" for "education"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 75 in (5)(c) near beginning of first sentence substituted "course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana" for "course in another state", after "employment as a peace officer" inserted "or member of the military law enforcement", near end after "successfully" substituted "completing" for "passing" and after "equivalency" substituted "course" for "test", and at end after "academy" deleted "and successfully completing a legal training course conducted by the academy", inserted second sentence requiring review and approval of prior employment of a member of the military law enforcement, and in third sentence near beginning substituted "equivalency course" for "equivalency test", substituted "complete the appropriate basic equivalency course" for "complete the basic course", and at end substituted "failure of the equivalency course" for "test"; in (6) in third sentence substituted "basic equivalency course" for "basic course or the legal training course"; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Cross-References

Board of Crime Control — functions, 44-4-301.

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Exception for organizing posse, 7-32-2112.
Duties of Sheriff, 7-32-2121.

7-32-305. Purchase of firearm by retiring law enforcement officer. A sheriff or other peace officer, as defined in 7-32-303, who is terminating from service and is eligible for a retirement benefit from a retirement plan under Title 19, chapters 6 through 9, 19, or 21, may request to purchase firearms that have been issued to the sheriff or peace officer and that are legal for a private citizen to possess. If the request is accepted, the parties shall agree on the purchase price, not to exceed fair market value.

History: En. Sec. 1, Ch. 142, L. 2009.

Compiler's Comments

Effective Date: Section 3, Ch. 142, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 2, 2009.

Parts 4 through 20 reserved

Part 21
Sheriff's Office

Part Cross-References

Consolidated government — prior rights of law enforcement officers, 7-3-1344.
Detention center defined, 7-32-2120.
Sheriffs' retirement, Title 19, ch. 7.
Automatic security alarm system — permission of chief law enforcement officer, 37-60-408.
Restriction on local government regulation of firearms, 45-8-351.

7-32-2101. Vacancy in office of sheriff. When the sheriff is committed under an execution or commitment for not paying over money received by virtue of the sheriff's office and remains committed for 60 days, the office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907; re-en. Sec. 4787, R.C.M. 1921; Cal. Pol. C. Sec. 4186; re-en. Sec. 4787, R.C.M. 1935; R.C.M. 1947, 16-2715; amd. Sec. 689, Ch. 61, L. 2007.

Cross-References

Liability for refusing to pay over money, 7-32-2130.

7-32-2102. Undersheriff to be appointed — return to other duties. (1) The sheriff, as soon as possible after taking office, shall, except in counties of the seventh class, appoint an undersheriff to serve at the pleasure of the sheriff. The undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) shall resume other duties within the sheriff's office, while maintaining tenure and seniority, if the sheriff appoints another to succeed the deputy sheriff as undersheriff. Upon the return to the position of deputy sheriff, the person must be paid the same salary the person would have received had the person not taken the undersheriff position.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907; re-en. Sec. 4775, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1933; re-en. Sec. 4775, R.C.M. 1935; R.C.M. 1947, 16-2703; amd. Sec. 16, Ch. 220, L. 1985; amd. Sec. 1, Ch. 375, L. 1985; amd. Sec. 8, Ch. 36, L. 2005.

Cross-References

Classification of counties, 7-1-2111.

7-32-2103. Repealed. Sec. 1, Ch. 194, L. 1981.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 2, Ch. 263, L. 1979.

7-32-2104. Qualifications of deputy sheriff. (1) A sheriff may not employ an individual as a deputy sheriff unless the individual:

(a) is a graduate of an accredited high school or the equivalent;

(b) is of good moral character;

(c) has never been convicted of a felony;

(d) has not within 5 years immediately preceding the date of employment been affiliated in any manner with a subversive organization; and

(e) has been examined by a physician licensed to practice in the state of Montana within 30 days immediately preceding the date of employment and has been pronounced in good physical condition.

(2) This section is not applicable to any deputy sheriff whose term of employment commenced prior to March 2, 1967.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(2); amd. Sec. 690, Ch. 61, L. 2007.

Cross-References

Authorization to exceed limitation on number of deputy officers, 7-4-2402.
Accreditation of schools, 20-7-102.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-32-2105. Probationary period for deputy sheriff. Any person whose term of employment as a deputy sheriff commences subsequent to March 2, 1967, shall serve a 1-year probationary period, and during this 1-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of 7-32-2104 through 7-32-2110.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(3).

Cross-References

Police — probationary period, 7-32-4113.

7-32-2106. Attendance at Montana law enforcement academy required for deputy sheriffs. (1) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to March 2, 1967, to attend that academy provided for by Title 44, chapter 10, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending.

(2) Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(4).

7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment — restrictions on evaluations. (1) A deputy sheriff shall continue in service until relieved of employment in the manner provided in this part and only for one or more of the following specified causes:

(a) conviction of a felony subsequent to the commencement of employment;

(b) willful disobedience of an order or orders given by the sheriff;

(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(d) sleeping while on duty;

(e) incapacity materially affecting ability to perform official duties; or

(f) gross inefficiency in the performance of official duties.

(2) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating deputies.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(5); amd. Sec. 691, Ch. 61, L. 2007; amd. Sec. 2, Ch. 244, L. 2007.

Cross-References

Role of Police Commission in hearing and deciding charges against police officers, 7-32-4155.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

7-32-2108. Written notice of termination of employment required. When a sheriff terminates the employment of a deputy, the sheriff shall at the time of termination cause to be served upon the deputy a statement in writing, subscribed and sworn to by the sheriff, setting forth the cause or causes for the discharge or termination of the deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(6); amd. Sec. 692, Ch. 61, L. 2007.

Cross-References

Termination of employment, Title 39, ch. 2, part 5.

7-32-2109. Right to hearing on termination of deputy sheriff's employment. (1) A deputy sheriff whose employment is terminated has a right of appeal:

(a) to the district court of the county where the deputy was employed; or

(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the deputy sheriff is covered by a collective bargaining agreement.

(2) The appeal to the district court must be made within 30 days from the date of the termination of employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 1, Ch. 468, L. 1993.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

7-32-2110. Reinstatement of deputy sheriff. In the event that a termination is reversed or modified, the deputy must be reinstated as a deputy sheriff at the same salary received by the deputy prior to the discharge or termination of employment. The deputy is also entitled to rights that might have accrued to the deputy's benefit prior to the discharge or termination of employment, including the salary that the deputy would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 2, Ch. 468, L. 1993.

Cross-References

Procedure for reinstatement on police force, 7-32-4110.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-32-2111. Hours of work for deputy sheriff of county of first or second class. Any person employed as a deputy sheriff of a first- or second-class county shall not be forced to work in excess of 40 hours per week except in case of an emergency and shall be entitled to 2 days off in each 7-day period.

History: En 16-3705.1 by Sec. 1, Ch. 329, L. 1973; R.C.M. 1947, 16-3705.1.

Cross-References

Classification of counties, 7-1-2111.

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.
Overtime compensation — exclusions, 39-3-406.
Hours of labor in certain employments, Title 39, ch. 4.

7-32-2112. Exception for organizing posse. The provisions of 7-32-301 through 7-32-303 shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Exception for organizing posse, 7-32-304.

7-32-2113. Payment of partial salary of deputy sheriff injured in performance of duty. (1) A deputy sheriff who is injured in the performance of the deputy sheriff's duties and who requires medical or other remedial treatment for injuries that render the deputy sheriff unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the deputy sheriff must be unable to perform the deputy sheriff's duties as a result of the injury.

History: En. Sec. 1, Ch. 271, L. 2005.

Cross-References

Sheriffs' retirement system — disability retirement benefits, Title 19, ch. 7, part 6.
Workers' compensation and benefits generally, Title 39, ch. 71, part 7.

7-32-2114. Assignment to light duty or other agency. (1) Whenever, in the opinion of the county and supported by a health care provider's opinion, the deputy sheriff is able to perform specified types of light duty, payment of the officer's partial salary amount under 7-32-2113 must be discontinued if the deputy sheriff refuses to perform light duty when it is available and offered to the deputy sheriff.

(2) The deputy sheriff may be transferred to another department or agency within the county.

History: En. Sec. 2, Ch. 271, L. 2005.

7-32-2115 through 7-32-2119 reserved.

7-32-2120. Definitions. As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

History: En. Sec. 1, Ch. 461, L. 1989.

Cross-References

Municipal detention centers authorized, 7-32-4201.

7-32-2121. Duties of sheriff. The sheriff shall:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections that may come to the sheriff's knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the detention center and the inmates in the detention center, unless the detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a detention center administrator or by another local government;

(8) endorse upon all notices and process the year, month, day, hour, and minute of receipt and issue to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of receipt;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if the sheriff fails to make service, the reasons for this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform other duties that are required by law.

History: (1) thru (10)En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R.C.M. 1921; Cal. Pol. C. Sec. 4176; amd. Sec. 1, Ch. 157, L. 1925; re-en. Sec. 4774, R.C.M. 1935; amd. Sec. 10, Ch. 535, L. 1975; Sec. 16-2702, R.C.M. 1947; (11)En. Sec. 1, Ch. 42, L. 1981; (12)En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907; re-en. Sec. 4794, R.C.M. 1921; Cal. Pol. C. Sec. 4193; re-en. Sec. 4794, R.C.M. 1935; Sec. 16-2722, R.C.M. 1947; R.C.M. 1947, 16-2702, 16-2722; amd. Sec. 3, Ch. 263, L. 1979; amd. Sec. 1, Ch. 42, L. 1981; amd. Sec. 7, Ch. 447, L. 1985; amd. Sec. 9, Ch. 461, L. 1989; amd. Sec. 693, Ch. 61, L. 2007.

Cross-References

Sheriff to act as crier, 3-5-407.
County jails, Title 7, ch. 32, part 22.
Execution of judgment, Title 25, ch. 13.
Service of process, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).
Clerk, Sheriff, or Coroner not to practice law, 37-61-203.
Arrest, Title 46, ch. 6.
Initial appearance of arrested person, Title 46, ch. 7.

7-32-2122. Duties of undersheriff. Whenever a vacancy occurs in the office of sheriff, the undersheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

7-32-2123. Appointment of detention center staff. A sheriff who operates a detention center under 7-32-2121 may appoint deputy sheriffs or nonsworn individuals as detention center staff. A nonsworn individual appointed to the detention center staff need not receive the same salary as a deputy sheriff.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 4, Ch. 263, L. 1979; amd. Sec. 8, Ch. 447, L. 1985; amd. Sec. 1, Ch. 16, Sp. L. June 1986; amd. Sec. 10, Ch. 461, L. 1989.

Cross-References

Salaries of Deputy Sheriffs, 7-4-2505.
County jails, Title 7, ch. 32, part 22.

7-32-2124. Service of papers on sheriff. Service of a paper, other than a process, upon the sheriff may be made by delivering it to the sheriff, a deputy, or a person in charge of the office during office hours or, if none of the enumerated individuals is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907; re-en. Sec. 4791, R.C.M. 1921; Cal. Pol. C. Sec. 4190; re-en. Sec. 4791, R.C.M. 1935; R.C.M. 1947, 16-2719; amd. Sec. 694, Ch. 61, L. 2007.

Cross-References
Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

7-32-2125. Operation of sheriff's vehicle. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by the sheriff and may also pay for the operation and maintenance of those vehicles from county funds.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; R.C.M. 1947, 16-2724(part); amd. Sec. 695, Ch. 61, L. 2007.

Cross-References
General authority of County Commissioners, 7-5-2101.
Authorization for county to obtain property, 7-8-2201.

7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1) The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance must be paid for from county funds and must provide full comprehensive and collision coverage plus minimum coverage of $100,000 for each person for bodily injury and medical expenses, $300,000 for all persons per accident, and $50,000 per accident for property damage.

(2) This section does not apply to counties furnishing motor vehicles to the sheriff's office pursuant to the provisions of 7-32-2125.

History: En. Sec. 2, Ch. 340, L. 1971; R.C.M. 1947, 16-2725; amd. Sec. 9, Ch. 36, L. 2005.

Cross-References
General authority of County Commissioners, 7-5-2101.
Required motor vehicle insurance, 61-6-301.

7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator. Any action for default or misconduct of a sheriff, an undersheriff, detention center staff, or a deputy may be prosecuted against the executors or administrators of the sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907; re-en. Sec. 4777, R.C.M. 1921; re-en. Sec. 4777, R.C.M. 1935; R.C.M. 1947, 16-2705; amd. Sec. 11, Ch. 461, L. 1989; amd. Sec. 696, Ch. 61, L. 2007.

Cross-References
Certain claims to be brought against personal representative, 72-3-612.

7-32-2128. False claims by sheriff. A sheriff who falsely represents to the board of county commissioners or governor the sheriff's actual traveling expenses in the performance of any official duty or causes to be paid to the sheriff from the state or any county treasury a sum exceeding the actual expenses in the performance of the sheriff's duty is guilty of a misdemeanor.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R.C.M. 1921; re-en. Sec. 4909, R.C.M. 1935; amd. Sec. 18, Ch. 513, L. 1973; amd. Sec. 99, Ch. 326, L. 1974; R.C.M. 1947, 25-225; amd. Sec. 1, Ch. 446, L. 1979; amd. Sec. 12, Ch. 461, L. 1989; 7-32-2128(1), MCA 1987 redes. 7-32-2249 by Code Commissioner, 1989; amd. Sec. 17, Ch. 114, L. 2003.

Cross-References
Confinement of inmates, 7-32-2205.
False claims by detention center administrator, 7-32-2249.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-32-2129. Misconduct of undersheriff. Any default, misfeasance, or malfeasance of an undersheriff is a breach of the condition of the bond given by the sheriff who appointed the undersheriff and is also a breach of the condition of the bond given by the undersheriff to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part); amd. Sec. 697, Ch. 61, L. 2007.

Cross-References
Suretyship, Title 28, ch. 11, part 4.

7-32-2130. Liability for refusing to pay money. If on demand the sheriff neglects or refuses to pay any money to the person entitled to money that may come into the sheriff's possession by virtue of office, after deducting legal fees, the person may recover the amount with 25% damages and interest at the rate of 10% a month from the time of demand.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907; re-en. Sec. 4782, R.C.M. 1921; Cal. Pol. C. Sec. 4181; re-en. Sec. 4782, R.C.M. 1935; R.C.M. 1947, 16-2710; amd. Sec. 698, Ch. 61, L. 2007.

Cross-References

Breach of obligation to pay money, 27-1-312.
Liability, Title 27, ch. 1, part 7.

7-32-2131. Liability in civil actions. (1) If the sheriff does not return a notice or process in the sheriff's possession with the necessary endorsement without delay, the sheriff is liable to the party aggrieved for $200 and for all damages sustained by the party.

(2) If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or the creditor's attorney, to levy upon or sell any property of the party charged in the writ that is liable to be levied upon or sold, the sheriff is liable to the creditor for the value of the property.

(3) A direction or authority by a party or a party's attorney to a sheriff in respect to the execution of process or return of process or any act or omission relating to the process is not available to discharge or excuse the sheriff from a liability for neglect or misconduct unless it is contained in a writing signed by the attorney of the party or by the party.

(4) As used in this part, the following definitions apply:

(a) "Notice" includes all papers and orders, except process, required to be served in any proceeding before a court, board, or officer or required by law to be served independently of the proceeding.

(b) "Process" includes all writs, warrants, summons, and orders of courts of justice or judicial officers.

History: (1)En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907; re-en. Sec. 4780, R.C.M. 1921; Cal. Pol. C. Sec. 4179; re-en. Sec. 4780, R.C.M. 1935; Sec. 16-2708, R.C.M. 1947; (2)En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907; re-en. Sec. 4781, R.C.M. 1921; Cal. Pol. C. Sec. 4180; re-en. Sec. 4781, R.C.M. 1935; Sec. 16-2709, R.C.M. 1947; (3)En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; Sec. 16-2714, R.C.M. 1947; (4)En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; Sec. 16-2701, R.C.M. 1947; R.C.M. 1947, 16-2701, 16-2708, 16-2709, 16-2714(part); amd. Sec. 699, Ch. 61, L. 2007.

Cross-References

Sheriff's return prima facie evidence, 25-3-302.
Damages, Title 27, ch. 1, part 2.
Liability, Title 27, ch. 1, part 7.

7-32-2132. Renumbered 7-32-2250. Code Commissioner, 1989.

7-32-2133 through 7-32-2140 reserved.

7-32-2141. Fees of sheriff. (1) For the services provided in subsections (1)(a) through (1)(n), the sheriff shall receive the fees, if any, set by the county governing body. If fees have not been set by the county governing body, the sheriff shall receive the following:

(a) for the service of summons and complaint on each defendant, $5;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, $5;

(c) for levying and serving each writ of attachment of execution on real or personal property, $5;

(d) for service of attachment on the body or order of arrest on each defendant, $5;

(e) for the service of affidavit, order, and undertaking in claim and delivery, $5;

(f) for serving a subpoena, $2.50 for each witness summoned;

(g) for serving a writ of possession or restitution, $5;

(h) for trial of the right of property or damages, including all services except mileage, $7;

(i) for taking bond or undertaking in any case authorized by law, $5;

(j) for serving every notice, rule, or order, $5 for each person served;

(k) for a copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, $5;

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, $7.50;

(n) for cancellation or postponement of sheriff's sale, $5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in 7-4-2511(1), and the fees must be deposited by the county treasurer in the general fund of the county unless the county has instituted a public safety levy, in which case the fees must be deposited in the account established pursuant to 7-6-2513.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(1); amd. Sec. 1, Ch. 174, L. 1981; amd. Sec. 2, Ch. 372, L. 1989; amd. Sec. 2, Ch. 390, L. 1995.

Cross-References

When Sheriff's execution of process justified and required, 25-3-202.
Execution of judgment, Title 25, ch. 13.
Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).
Subpoena service, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

7-32-2142. Fees of the sheriff for holding property. For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, the sheriff shall receive such sum as the court or judge may order, not to exceed the actual expense incurred. No keeper must receive to exceed $10 per day, and no keeper must be employed without an order of court or be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored or where there is no reasonable danger of loss.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(2).

Cross-References

Execution of judgment, Title 25, ch. 13.
Bailment, Title 70, ch. 6.

7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff may receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to a detention center only the sheriff's actual expenses when the travel is made by railroad or airline. When travel is by means other than by railroad or airline, the sheriff must receive a mileage allowance as provided in 2-18-503 for each mile actually traveled both going and returning and the actual expenses incurred by the sheriff in conveying a person under arrest before a magistrate or to a detention center. The sheriff must receive the same mileage and actual expenses for the person conveyed or transported under order of court within the county. The mileage and expenses are in full payment for transporting and feeding the persons during transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more inmates, only one charge for mileage may be made.

(2) Mileage may not be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county must be paid over to the county treasurer and deposited in the county general fund.

(3) (a) Mileage may not be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the document accompanies the summons and the service of the document may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one charge for mileage may be allowed. In the service of subpoenas, only one mileage charge may be made when the persons named in the subpoena live in the same place or in the same direction, but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage may

be computed only from that place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one charge for mileage may be allowed.

(b) When a sheriff or constable serves more than one process in the same cause, not requiring more than one journey from the office, the sheriff or constable may receive mileage only for the more distant service, and mileage may not be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge $1 for the service of each item of a civil nature that requires a return or proof of service.

History: Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; (2)En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; Sec. 16-2724, R.C.M. 1947; Ap. p. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 640 C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (3)(b)En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; Sec. 25-216, R.C.M. 1947; R.C.M. 1947, 16-2724(part), 25-216(part), 25-226(part), 93-3016(part); amd. Sec. 6, Ch. 263, L. 1979; amd. Sec. 1, Ch. 215, L. 1985; amd. Sec. 14, Ch. 461, L. 1989; amd. Sec. 700, Ch. 61, L. 2007.

7-32-2144. *(Temporary)* **Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons.** (1) Subject to the provisions of 53-21-604, a sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Montana state hospital or other mental health facility is entitled to actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, must be audited and allowed by the governor or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. No other compensation may be received by sheriffs for the expenses.

(2) Unless otherwise provided, while in the discharge of civil and criminal duties, the sheriff is entitled to a mileage allowance, as provided in 2-18-503. The sheriff must also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court, as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for expenses in cases for which mileage is allowed under this section. *(Terminates June 30, 2011—sec. 9, Ch. 388, L. 2009.)*

7-32-2144. *(Effective July 1, 2011)* **Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons.** (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Montana state hospital or other mental health facility is entitled to actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, must be audited and allowed by the governor or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. No other compensation may be received by sheriffs for the expenses.

(2) Unless otherwise provided, while in the discharge of civil and criminal duties, the sheriff is entitled to a mileage allowance, as provided in 2-18-503. The sheriff must also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court, as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for expenses in cases for which mileage is allowed under this section.

History: Ap. p. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R.C.M. 1921; re-en. Sec. 4885, R.C.M. 1935; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 7, Ch. 439, L. 1975; Sec. 16-2723, R.C.M. 1947; Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch.

111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 26-226, R.C.M. 1947; R.C.M. 1947, 16-2723, 26-226(part); amd. Sec. 7, Ch. 263, L. 1979; amd. Sec. 2, Ch. 446, L. 1979; amd. Sec. 1, Ch. 361, L. 1983; amd. Sec. 1, Ch. 371, L. 2001; amd. Sec. 2, Ch. 388, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 388 in (1) at beginning of first sentence inserted "Subject to the provisions of 53-21-604"; and made minor changes in style. Amendment effective July 1, 2009, and terminates June 30, 2011.

7-32-2145. Mileage and expenses of sheriff for return of fugitives. For trips made for the return of fugitives apprehended and arrested outside the county, the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in 7-32-2143.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(part).

Part 22
Detention Centers

Part Cross-References

Detention center defined, 7-32-2241.

7-32-2201. Establishing detention center — detention center contract — regional detention center — authority for county to lease its property for detention center. For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:

(1) A detention center may be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the governing body of two or more local governments it is necessary or desirable to build, provide, or use a multijurisdictional detention center, they may do so in any of the jurisdictions concerned. The multijurisdictional detention center must be built or provided and kept in good repair at the expense of the local governments concerned on a basis as the governing bodies agree.

(2) A county or two or more local governments acting together may provide for the detention center allowed by subsection (1) by:

(a) establishing in the county government the position of detention center administrator and hiring a person, who is answerable to the governing body of the county, to fill the position or appointing the sheriff as detention center administrator; or

(b) entering into an agreement with a private party under which the private party will provide, maintain, or operate the detention center.

(3) The detention centers in this state are kept by the detention center administrators of the local governments in which they are situated. In the case of a multijurisdictional detention center as provided in subsection (1), the detention center must be kept by the local governments using the detention center on a basis as the governing bodies agree.

(4) The board of county commissioners has jurisdiction and power, under limitations and restrictions that are prescribed by law, to cause a detention center to be erected, furnished, maintained, and operated. The costs must be paid for out of the county treasury.

(5) The board of county commissioners has the power to lease to any person or entity any real or personal property of the county necessary or appropriate for use as a detention center. A lease entered into under this section must be for a period not to exceed 30 years and may not be limited by 7-8-2231.

(6) A county or two or more local governments acting together may enter into a lease-purchase agreement with a person or entity for a period not to exceed 20 years for the construction, furnishing, and purchasing of a detention center.

History: (1)En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973; Sec. 16-2802.1, R.C.M. 1947; (2)En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; Sec. 16-2803, R.C.M 1947; (3)En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch.

5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; Sec. 16-1008A, R.C.M. 1947; R.C.M. 1947, 16-1008A(part), 16-2802.1, 16-2803(part); amd. Sec. 10, Ch. 447, L. 1985; amd. Sec. 15, Ch. 461, L. 1989; amd. Sec. 2, Ch. 21, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.
Interlocal agreements, Title 7, ch. 11, part 1.
Use of detention center — payment of costs, 7-32-2242.
Regional correctional facilities, Title 53, ch. 30, part 5.

7-32-2202. Use of detention center in contiguous county. (1) When there is no detention center in the county or when the detention center becomes unfit or unsafe for the confinement of inmates, the district court judge may, by written appointment filed with the district court clerk, designate the detention center of a contiguous county for the confinement of the inmates of the judge's county and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the detention center administrator of each county involved, who must receive into the administrator's detention center all inmates authorized to be confined in the detention center pursuant to this section and who is responsible for the safekeeping of the persons committed in the same manner and to the same extent as if the administrator were the detention center administrator of the county for whose use the administrator's detention center is designated. With respect to the persons committed, the administrator is considered the detention center administrator of the county from which they were removed.

(3) When a detention center is erected in the county for the use of which the designation was made or its detention center is rendered fit and safe for the confinement of inmates, the district court judge of that county shall, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk shall immediately serve a copy of the revocation upon the detention center administrator of each county involved. The detention center administrator in the designated county shall remove the inmates to the detention center from which they were removed.

History: En. Secs. 3028, 3029, 3030, 3031, Pen. C. 1895; re-en. Secs. 9765, 9766, 9767, 9768, Rev. C. 1907; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1921; Cal. Pen. C. Secs. 1603, 1604, 1605, 1606; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1935; R.C.M. 1947, 16-2810, 16-2811, 16-2812, 16-2813; amd. Sec. 11, Ch. 447, L. 1985; amd. Sec. 16, Ch. 461, L. 1989; amd. Sec. 701, Ch. 61, L. 2007.

Cross-References

District Judge — expenses when not in county of residence, 3-5-215.

7-32-2203. Who may be confined in a detention center. Detention centers are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime;

(5) for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center.

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; R.C.M. 1947, 16-2803(part); amd. Sec. 17, Ch. 461, L. 1989.

Cross-References

Commitment of defendant, 46-19-101.
Location and function of prison, 53-30-101.
Contracts for confinement of inmates in other institutions, 53-30-106.

7-32-2204. Maintenance of detention center. The county commissioners, or the private party when provided in an agreement entered into under 7-32-2201(2), have the duty of building, operating, inspecting, and repairing the detention center and must take all necessary precautions against escape, sickness, or infection.

History: En. Sec. 3040, Pen. C. 1895; re-en. Sec. 9777, Rev. C. 1907; re-en. Sec. 12486, R.C.M. 1921; re-en. Sec. 12486, R.C.M. 1935; R.C.M. 1947, 16-2822; amd. Sec. 12, Ch. 447, L. 1985; amd. Sec. 18, Ch. 461, L. 1989.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-32-2205. Confinement of inmates. The detention center administrator shall receive all persons committed to the detention center by competent authority and provide them with necessary food, clothing, and bedding.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 13, Ch. 447, L. 1985; amd. Sec. 19, Ch. 461, L. 1989.

Cross-References

False claims by detention center administrator, 7-32-2249.

7-32-2206. Repealed. Sec. 31, Ch. 461, L. 1989.

History: (1)En. Sec. 1, Ch. 120, L. 1923; re-en. Sec. 12472.1, R.C.M. 1935; Sec. 16-2807, R.C.M. 1947; (2)En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; re-en. Sec. 12472.2, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971; Sec. 16-2808, R.C.M. 1947; (3)En. Sec. 3027, Pen. C. 1895; re-en. Sec. 9764, Rev. C. 1907; re-en. Sec. 12473, R.C.M. 1921; Cal. Pen. C. Sec. 1602; re-en. Sec. 12473, R.C.M. 1935; Sec. 16-2809, R.C.M. 1947; R.C.M. 1947, 16-2807, 16-2808, 16-2809; amd. Sec. 1, Ch. 671, L. 1979; amd. Sec. 14, Ch. 447, L. 1985; amd. Sec. 1, Ch. 645, L. 1985.

7-32-2207. Confinement of persons on civil process. (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party to the action, the detention center administrator is not bound to receive the person unless security is given on the part of the party at whose instance the process is issued. The security must be a deposit of money, to meet the expenses for the person's necessary food, clothing, and bedding. The detention center administrator is not required to detain the person any longer than the period for which these expenses are provided.

(2) This section does not apply to cases in which a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

History: En. Sec. 3037, Pen. C. 1895; re-en. Sec. 9774, Rev. C. 1907; re-en. Sec. 12483, R.C.M. 1921; Cal. Pen. C. Sec. 1612; re-en. Sec. 12483, R.C.M. 1935; R.C.M. 1947, 16-2819; amd. Sec. 15, Ch. 447, L. 1985; amd. Sec. 20, Ch. 461, L. 1989; amd. Sec. 702, Ch. 61, L. 2007.

7-32-2208. Actual confinement of inmates required. An inmate committed to a detention center for trial or examination or, except as provided in 7-32-2225 through 7-32-2227, a prisoner convicted must be actually confined in the detention center until the inmate or prisoner is legally discharged.

History: En. Sec. 3025, Pen. C. 1895; re-en. Sec. 9762, Rev. C. 1907; re-en. Sec. 12471, R.C.M. 1921; Cal. Pen. C. Sec. 1600; re-en. Sec. 12471, R.C.M. 1935; R.C.M. 1947, 16-2806; amd. Sec. 4, Ch. 361, L. 1989; amd. Sec. 21, Ch. 461, L. 1989; amd. Sec. 703, Ch. 61, L. 2007.

Cross-References

Liability for escape in civil actions, 7-32-2250.

7-32-2209. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 2, Ch. 671, L. 1979; amd. Sec. 16, Ch. 447, L. 1985; amd. Sec. 2, Ch. 645, L. 1985.

7-32-2210. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3035, Pen. C. 1895; re-en. Sec. 9772, Rev. C. 1907; re-en. Sec. 12481, R.C.M. 1921; Cal. Pen. C. Sec. 1610; re-en. Sec. 12481, R.C.M. 1935; R.C.M. 1947, 16-2817.

7-32-2211. Service of papers upon detention center administrator for inmate. A detention center administrator who is served with a paper in a judicial proceeding that is directed to an inmate in the administrator's custody shall immediately deliver it to the inmate.

History: En. Sec. 3034, Pen. C. 1895; re-en. Sec. 9771, Rev. C. 1907; re-en. Sec. 12480, R.C.M. 1921; Cal. Pen. C. Sec. 1609; re-en. Sec. 12480, R.C.M. 1935; R.C.M. 1947, 16-2816; amd. Sec. 22, Ch. 461, L. 1989; amd. Sec. 704, Ch. 61, L. 2007.

Cross-References

Sheriff — liability in civil actions, 7-32-2131.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

7-32-2212. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3041, Pen. C. 1895; re-en. Sec. 9778, Rev. C. 1907; re-en. Sec. 12487, R.C.M. 1921; re-en. Sec. 12487, R.C.M. 1935; R.C.M. 1947, 16-2823; amd. Sec. 17, Ch. 447, L. 1985.

7-32-2213. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 1, Ch. 93, L. 1909; re-en. Sec. 3070, R.C.M. 1921; re-en. Sec. 3070, R.C.M. 1935; R.C.M. 1947, 41-1106.

7-32-2214 through 7-32-2220 reserved.

7-32-2221. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Secs. 3023, 3024, Pen. C. 1895; re-en. Secs. 9760, 9761, Rev. C. 1907; re-en. Secs. 12469, 12470, R.C.M. 1921; Cal. Pen. C. Secs. 1598, 1599; re-en. Secs. 12469, 12470, R.C.M. 1935; R.C.M. 1947, 16-2804, 16-2805; amd. Sec. 1, Ch. 82, L. 1983; amd. Sec. 18, Ch. 447, L. 1985; amd. Sec. 12, Ch. 475, L. 1987; amd. Sec. 1, Ch. 434, L. 1989.

7-32-2222. Health and safety of inmates. (1) Each detention center shall comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator shall remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

History: (1)En. Sec. 3032, Pen. C. 1895; re-en. Sec. 9769, Rev. C. 1907; re-en. Sec. 12478, R.C.M. 1921; Cal. Pen. C. Sec. 1607; re-en. Sec. 12478, R.C.M. 1935; Sec. 16-2814, R.C.M. 1947; (2)En. Sec. 3033, Pen. C. 1895; re-en. Sec. 9770, Rev. C. 1907; re-en. Sec. 12479, R.C.M. 1921; Cal. Pen. C. Sec. 1608; re-en. Sec. 12479, R.C.M. 1935; Sec. 16-2815, R.C.M. 1947; (3)En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; Sec. 16-2818, R.C.M. 1947; R.C.M. 1947, 16-2814, 16-2815, 16-2818(part); amd. Sec. 19, Ch. 447, L. 1985; amd. Sec. 23, Ch. 461, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 768, L. 1991; amd. Sec. 1, Ch. 388, L. 1995; amd. Sec. 31, Ch. 546, L. 1995; amd. Sec. 1, Ch. 579, L. 2003.

Cross-References

Powers of judges at chambers, 3-5-311.

County Attorney — actions to recover money, 7-4-2713.

Sanitary inspections, 50-1-203.

7-32-2223. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Secs. 3038, 3039, Pen. C. 1895; re-en. Secs. 9775, 9776, Rev. C. 1907; re-en. Secs. 12484, 12485, R.C.M. 1921; Cal. Pen. C. Secs. 1613, 1614; re-en. Secs. 12484, 12485, R.C.M. 1935; R.C.M. 1947, 16-2820, 16-2821.

7-32-2224. Payment of medical costs by entities other than inmate. (1) The detention center administrator shall forward to the appropriate arresting agency all charges for medical treatment for which the agency is responsible.

(2) When the inmate is in the custody of a county detention center and the detention center administrator determines that the inmate requires medical treatment, the county or the arresting agency is responsible for medical costs associated with:

(a) conditions that are not preexisting;

(b) injuries incurred by the inmate:

(i) while in the custody of the detention center if the injuries are the result of an accident, an assault by another inmate, or negligent or intentionally torturous acts committed by the detention center administrator or the administrator's staff;

(ii) during the arrest of the inmate by the sheriff or the sheriff's staff if the injuries were not incurred while unlawfully resisting arrest; or

(iii) while on a work program or while the inmate is performing duties assigned by the detention center administrator or the administrator's staff;

(c) infections or contagious or communicable diseases that the inmate contracts while in the custody of the detention center; or

(d) medical examinations that are required by law or court order unless the order provides otherwise.

(3) In order to determine which entity is responsible for medical charges that are not the responsibility of the inmate, the following applies:

(a) If the arresting agency is a law enforcement agency whose jurisdiction is limited to the county boundaries of the county or a municipality in the county where the detention center is located, then the county is responsible.

(b) If the arresting agency is a law enforcement agency with statewide jurisdiction or whose jurisdiction is a county or municipality in a county other than the county where the detention center is located, then the arresting agency is responsible.

(c) If a municipality commits a person to the detention center of the county in which the municipality is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that municipality, then the county in which the municipality is located is responsible.

(4) For the purposes of 7-32-2245 and this section, "preexisting condition" means an illness or condition that began or injuries that were sustained before a person was in the custody of county officers.

History: En. Sec. 3, Ch. 579, L. 2003.

7-32-2225. County jail work program. (1) A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor.

History: En. Sec. 1, Ch. 361, L. 1989.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program, Title 46, ch. 18, part 7.

7-32-2226. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of 7-32-2227 to work on public projects as designated by the board of county commissioners. Upon a request of a federal or state agency, city government, or nonprofit corporation and upon mutually agreeable terms or on their own action for county projects, the board of county commissioners may designate projects as public projects for purposes of this section. A person participating in a county jail work program may not:

(a) have the person's labor or other work contracted out to a private party;

(b) be required to do labor or other work that furthers the private interests of a government employee or official;

(c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

(d) be used to displace any regular government employee;

(e) perform the duties of any vacant government position; or

(f) work on any construction or reconstruction project.

(2) A county may not reduce its current workforce in order to transfer the duties of a reduction to persons participating in a county jail work program.

(3) A person participating in a county work program may not be physically confined in the county jail during the course of the person's participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 2 days of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. An unexcused failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

(7) Weed management, as defined in 7-22-2101, whether on public or private land, and other maintenance projects authorized by a board of county commissioners are county projects for purposes of 7-32-2225 through 7-32-2227.

History: En. Sec. 2, Ch. 361, L. 1989; amd. Sec. 2, Ch. 203, L. 2001; amd. Sec. 1, Ch. 414, L. 2005.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.
Jail work release program, Title 46, ch. 18, part 7.

7-32-2227. Inmate eligibility for participation. A person may be permitted to participate in a county jail work program if the person:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, partner or family member assault, incest, or any other offense in which violence is an element of the crime or for an offense during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace or by the judge's, magistrate's, or justice's successor; and

(4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has approved the participation.

History: En. Sec. 3, Ch. 361, L. 1989; amd. Sec. 2, Ch. 350, L. 1995.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.
Jail work release program, Title 46, ch. 18, part 7.

7-32-2228 through 7-32-2230 reserved.

7-32-2231. Purpose to allow private industry involvement. It is the purpose of 7-32-2231 through 7-32-2234 to allow multijurisdictional or single-jurisdiction detention centers to be built by private industry and leased to the participating local government or governments for operation by the local government, collectively by participating local governments, or by a private entity with the concurrence of the local governments involved.

History: En. Sec. 1, Ch. 447, L. 1985; amd. Sec. 24, Ch. 461, L. 1989.

7-32-2232. Detention centers — contracts with private parties. (1) The term of an agreement under 7-32-2201 with a private party may not exceed 3 years.

(2) The agreement must include:

(a) detailed standards for the operation of the detention center and the incarceration of inmates;

(b) a performance bond from the private party acceptable to the local government;

(c) a promise from the private party to indemnify the local government for any damages for which the local government is found liable as a result of the operation of the detention center;

(d) a provision that the private party must purchase liability insurance in an amount acceptable to the local government;

(e) minimum standards for the training of detention center staff and a provision that the private party will ensure such training; and

(f) a provision that the local government may immediately terminate the contract for good cause.

(3) The provisions of Title 7 relating to bids for local government contracts and purchases do not apply to a contract entered into under 7-32-2201 and this section.

History: En. Sec. 2, Ch. 447, L. 1985; amd. Secs. 25, 30, Ch. 461, L. 1989.

7-32-2233. Requests for contract proposals. (1) A local government seeking to enter into a contract under 7-32-2201 and 7-32-2232 may publish a request for proposals. The request for proposals must be published in a newspaper of general circulation in the county once a week for 3 successive weeks and must include information concerning the type of detention center services required.

(2) Requests for proposals must be sent to persons who have previously requested that their names be placed on a list of persons providing detention center services. The Montana board of

crime control shall maintain a list of persons providing detention center services and furnish the list to a local government upon request.

(3) In selecting a proposal and awarding a contract, a local government need not accept the proposal with the lowest cost.

(4) The local government must base its selection on demonstrated competence, knowledge and qualifications, the reasonableness of the services proposed, and the reasonableness of the proposed contract price for the detention center services.

(5) A copy of all proposals must be kept available for public inspection in the office of the county clerk and recorder.

(6) The local government must give specific reasons for its selection of a proposal. The reasons must be recorded in the minutes of the governing body of the local government.

History: En. Sec. 3, Ch. 447, L. 1985; amd. Sec. 26, Ch. 461, L. 1989.

7-32-2234. Powers of detention center administrators. A detention center administrator is responsible for the immediate management and control of the detention center subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of an administrator and detention center personnel employed under the administrator's authority include control over inmates:

(1) within the confines and grounds of the detention center; and

(2) outside the detention center confines and grounds while transporting any inmate or in the hot pursuit or apprehension of any escapee.

History: En. Sec. 4, Ch. 447, L. 1985; amd. Sec. 27, Ch. 461, L. 1989; amd. Sec. 705, Ch. 61, L. 2007.

7-32-2235 through 7-32-2240 reserved.

7-32-2241. Definitions. As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

History: En. Sec. 1, Ch. 461, L. 1989.

7-32-2242. Use of detention center — payment of costs. (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(2) (a) If a person is confined in a detention center by an arresting agency not responsible for the operation of the detention center, the costs of holding the person in confinement must be paid by the arresting agency at a rate that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of confinement, excluding capital construction costs, except as provided in 7-32-2245 or subsection (2)(b) of this section.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the arresting agency.

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction.

History: En. Sec. 2, Ch. 461, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 768, L. 1991; amd. Sec. 2, Ch. 388, L. 1995; amd. Sec. 32, Ch. 546, L. 1995.

7-32-2243. Contracts for detention center services. (1) Contracts concerning detention center services and facilities between state or local government units, the state of Montana, or the federal government must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(2) A government unit responsible for a detention center may contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction.

History: En. Sec. 3, Ch. 461, L. 1989.

7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with Title 41, chapter 5, part 3.

History: En. Sec. 4, Ch. 461, L. 1989; amd. Sec. 10, Ch. 547, L. 1991; amd. Sec. 40, Ch. 42, L. 1997; amd. Sec. 2, Ch. 286, L. 1997.

7-32-2245. Payment of confinement and medical costs by inmate. (1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of the inmate's confinement in a detention center. The rate for confinement costs must be determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) If an inmate requires medical treatment, the inmate is responsible for medical costs associated with:

(a) preexisting conditions;

(b) self-inflicted injuries while in custody;

(c) injuries incurred while in custody if the injuries are not the result of negligent or intentionally torturous acts committed by the detention center administrator or a member of the administrator's staff;

(d) injuries incurred during the commission of a crime or while unlawfully resisting arrest or attempting to avoid an arrest; and

(e) any other injuries or illnesses that are not the responsibility of other entities as provided in 7-32-2224 and 7-32-2242(3).

(3) (a) If an inmate is found to be able to pay for the inmate's medical costs, as provided in subsections (1) and (2), the health care provider who treats the inmate shall collect the cost of the treatment from the inmate or the detention center administrator may arrange with the health care provider to pursue reimbursement from a third-party payor for the services provided.

(b) If the health care provider is unable to collect from the inmate or third-party payor within 120 days from the date of the service, the county is responsible for reimbursing the health care provider for the services at:

(i) the medicaid reimbursement rate or at a rate that is 70% of the provider's customary charges, whichever is greater; or

(ii) a negotiated rate.

(c) If the health care provider is reimbursed by the inmate or the third-party payor after the provider has been reimbursed by the county, the provider shall refund to the county the amount that the provider had been paid by the county for the services provided to the inmate.

(4) Inability to pay may not be a factor in providing necessary medical care for an inmate.

(5) This section does not restrict an inmate's right to use a third-party payor.

(6) If a city or town is the arresting agency and commits a person to the detention center of the county in which the city or town is located, the inmate is responsible for the inmate's medical expenses and the provisions of this section apply.

History: En. Sec. 5, Ch. 461, L. 1989; amd. Sec. 3, Ch. 388, L. 1995; amd. Sec. 2, Ch. 579, L. 2003.

7-32-2246. Temporary release from detention center. A detention center inmate may be granted, by court order and with the consent of the sheriff, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

(1) seeking employment;
(2) working at employment;
(3) conducting the inmate's own business or self-employment;
(4) attending to the needs of the inmate's family;
(5) attending an educational institution; or
(6) obtaining medical treatment.

History: En. Sec. 6, Ch. 461, L. 1989; amd. Sec. 706, Ch. 61, L. 2007.

7-32-2247. Annoyance of inmate prohibited — penalty. (1) The detention center administrator or staff member in charge of an inmate must use necessary and proper means to protect an inmate from purposeful or knowing insults and annoyance by others and to prevent others from communicating with the inmate while the inmate is at or is going to or returning from employment.

(2) A person persisting in purposefully or knowingly insulting, annoying, or communicating with an inmate after being told by the detention center administrator or staff member to desist commits the offense of inmate annoyance.

(3) A person convicted of the offense of inmate annoyance shall be fined an amount not to exceed $500.

History: En. Sec. 7, Ch. 461, L. 1989.

7-32-2248. Inmate endangerment — penalty. (1) A detention center administrator or staff member commits the offense of inmate endangerment if the administrator or staff member knowingly:

(a) places or keeps a juvenile with adult inmates;
(b) uses corporal punishment against an inmate; or
(c) uses physical force against an inmate, except as necessary for:
(i) self-defense;
(ii) control of inmates;
(iii) protection of another person from imminent physical attack; or
(iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed $500.

History: En. Sec. 8, Ch. 461, L. 1989; amd. Sec. 707, Ch. 61, L. 2007.

7-32-2249. False claims by detention center administrator. A detention center administrator who falsely represents to the governing body of a local government the actual expenses of boarding detention center inmates, furnishing food and supplies, or providing services, who presents to the governing body false items in a claim or false vouchers, or if the administrator is not a private detention center administrator, who makes any profit from the keeping of inmates in the administrator's custody and a person who gives a false item or false voucher to be used by the detention center administrator in any claim against the local government is guilty of a misdemeanor.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R.C.M. 1921; re-en. Sec. 4910, R.C.M. 1935; amd. Sec. 19, Ch. 513, L. 1973; R.C.M. 1947, 25-229; amd. Sec. 1, Ch. 446, L. 1979; amd. Sec. 12, Ch. 461, L. 1989; Sec. 7-32-2128(1), MCA 1987; redes. 7-32-2249 by Code Commissioner, 1989; amd. Sec. 708, Ch. 61, L. 2007.

Cross-References

False claims by Sheriff, 7-32-2128.
Confinement of inmates, 7-32-2205.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-32-2250. Liability for escape in civil actions. (1) A detention center administrator who fails to prevent the escape or rescue of a person who was arrested in a civil action and who is in the administrator's custody without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the detention center administrator is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the detention center administrator is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the detention center administrator is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in the detention center administrator's custody, the administrator may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a detention center administrator for a rescue or for an escape of a person arrested upon an execution or commitment if, after the rescue or escape and before the commencement of the action, the inmate returns to the detention center or is retaken by the administrator.

History: En. Secs. 4390, 4391, 4392, Pol. C. 1895; re-en. Secs. 3019, 3020, 3021, Rev. C. 1907; re-en. Secs. 4783, 4784, 4785, R.C.M. 1921; Cal. Pol. C. Secs. 4182, 4183, 4184; re-en. Secs. 4783, 4784, 4785, R.C.M. 1935; R.C.M. 1947, 16-2711, 16-2712, 16-2713; amd. Sec. 5, Ch. 263, L. 1979; amd. Sec. 9, Ch. 447, L. 1985; amd. Sec. 13, Ch. 461, L. 1989; Sec. 7-32-2132, MCA 1987; redes. 7-32-2250 by Code Commissioner, 1989; amd. Sec. 709, Ch. 61, L. 2007.

Cross-References

Execution of judgment, Title 25, ch. 13.
Arrest and bail in civil actions, Title 27, ch. 16.
Bail, Title 46, ch. 9.

Part 23
Powers of County Commissioners Related to Law Enforcement

Part Cross-References

County Commissioners, Title 7, ch. 4, part 21.
General authority of County Commissioners, 7-5-2101.

7-32-2301. Rewards for apprehension of criminals. (1) The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of $500 for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county.

(2) In no case shall the members of the board, sheriff, or other county officer receiving an annual or monthly salary be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909; re-en. Sec. 4483, R.C.M. 1921; re-en. Sec. 4483, R.C.M. 1935; R.C.M. 1947, 16-1123.

Cross-References

County officers, Title 7, ch. 4, parts 1 and 21 through 30.
Felony defined, 45-2-101.

7-32-2302. Establishment of curfew — penalty. (1) (a) The governing body of a county may adopt an ordinance that establishes a curfew hour after which minors will not be allowed abroad on the public streets, roadways, or lands of the county.

(b) The ordinance must contain a description of the area covered by the curfew and provide exceptions for approved activities. The curfew may be countywide or pertain to any portion of the county, including an unincorporated city or town. The curfew may not extend to any area within the boundaries of an incorporated city or town.

(2) It is the duty of any officer or official enforcing the laws of the state to enforce the provisions of this section.

(3) A person convicted of violating a curfew ordinance adopted under subsection (1) shall be punished by a fine in an amount not exceeding $75 or by a sentence of up to 10 hours of community service, or both. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

History: (1)En. Sec. 1, Ch. 29, L. 1969; Sec. 16-1182, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1969; Sec. 16-1183, R.C.M. 1947; (3)En. Sec. 3, Ch. 29, L. 1969; Sec. 16-1184, R.C.M. 1947; R.C.M. 16-1182, 16-1183, 16-1184; amd. Sec. 1, Ch. 258, L. 1995; amd. Sec. 1, Ch. 131, L. 2001.

Cross-References

General authority of County Commissioners, 7-5-2101.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

Parts 24 through 40 reserved

Part 41
Municipal Police Force

Part Cross-References

Legislative finding — authority to contract, 7-1-4105.
Consolidated government — prior rights of law enforcement officers, 7-3-1344.
Police department, 7-3-4465.
Police retirement — statewide plan, Title 19, ch. 9.
Police retirement — local funds, Title 19, ch. 19.
Automatic security alarm system — permission of chief law enforcement officer, 37-60-408.
Restriction on local government regulation of firearms, 45-8-351.

7-32-4101. Police department authorized and required. There shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

Cross-References

Department of Public Safety authorized, 7-32-101.

7-32-4102. Applicability of part. (1) This part shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3 and amendments thereto.

(2) Where the provisions of this part do conflict with the provisions of said part 42 and the amendments thereto pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

7-32-4103. Supervision of police department. The mayor in all cities and towns or the manager in those cities operating under the commission-manager plan has charge of and supervision over the police department. The mayor or manager shall appoint all the members and officers of the department. Subject to the provisions of this part, the mayor or manager may suspend or remove any member or officer of the force. The mayor or manager shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: En. Sec. 2, Ch. 136, L. 1907; Sec. 3305, Rev. C. 1907; re-en. Sec. 5096, R.C.M. 1921; re-en. Sec. 5096, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1947; R.C.M. 1947, 11-1802; amd. Sec. 710, Ch. 61, L. 2007.

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.
Structure of Department of Public Safety — duties, 7-32-103.

7-32-4104. Additional regulations by city council. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this part or any law of the state, for the government of the police department and for regulating the powers and duties of its officers and members.

History: En. Sec. 11, Ch. 136, L. 1907; Sec. 3314, Rev. C. 1907; re-en. Sec. 5105, R.C.M. 1921; re-en. Sec. 5105, R.C.M. 1935; R.C.M. 1947, 11-1813.

Cross-References

General powers of Municipal Council, 7-5-4101.
Municipal ordinances, 7-5-4201.

7-32-4105. Duties of chief of police. (1) The chief of police:

(a) shall execute and return all process issued by the city judge or directed to the chief of police by any legal authority and must be present and shall assist the city court regularly;

(b) shall arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) must have charge and control of all police officers, subject to rules that may be prescribed by ordinance, and report to the council all delinquencies or neglect of duty or official misconduct of police officers for action of the council;

(d) shall perform other duties that the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of duties, but the chief of police may not serve a process in a civil action or proceeding except when a city or town is a party.

(3) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating police officers.

History: En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907; re-en. Sec. 5037, R.C.M. 1921; re-en. Sec. 5037, R.C.M. 1935; R.C.M. 1947, 11-810; amd. Sec. 711, Ch. 61, L. 2007; amd. Sec. 3, Ch. 244, L. 2007.

Cross-References

Department of Public Safety — officer's status for purpose of enforcing and executing court orders, 7-32-105.
Duties of Sheriff, 7-32-2121.
Execution of judgment, Title 25, ch. 13.
Arrest, Title 46, ch. 6.
Arraignment of defendant, Title 46, ch. 12.

7-32-4106. List of active and eligible police officers. (1) The city council has exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one list is an active list containing the names of individuals who are to be actually employed and receive pay while employed; and

(b) one list is an eligible list containing the names of individuals who may not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty must become members of the eligible list without pay and must be first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list must be entitled to fill a vacancy in the order of their appointment.

(3) The action of the council under this section is not subject to review by any court.

(4) Officers or members may not be placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list is equal to 20% of the active list.

History: En. Sec. 7, Ch. 136, L. 1907; Sec. 3310, Rev. C. 1907; re-en. Sec. 5101, R.C.M. 1921; amd. Sec. 5, Ch. 119, L. 1923; re-en. Sec. 5101, R.C.M. 1935; R.C.M. 1947, 11-1807; amd. Sec. 712, Ch. 61, L. 2007.

Cross-References

General powers of Municipal Council, 7-5-4101.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-32-4107. Utilization of retired officers. Police officers on the retired list of a city or town shall retire from the active list of police officers of the city or town but must be subject to call for police service or active duty whenever an emergency requires or the active list is temporarily insufficient for proper policing of the city or town, all under the rules that the board of police commissioners or city council prescribe.

History: En. Sec. 3, Ch. 100, L. 1927; amd. Sec. 3, Ch. 120, L. 1929; re-en. Sec. 5108.3, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 6, Ch. 85, L. 1977; R.C.M. 1947, 11-1819; amd. Sec. 713, Ch. 61, L. 2007.

Cross-References

Municipal Council rules and discipline, 7-5-4103.

7-32-4108. Appointment to police force. All appointments to the police force must be made by the mayor or, in those cities operating under the commission-manager plan, by the manager and must be confirmed by the city council or commission. An appointment may not be made until:

(1) an application for a position on the police force has been filed with the mayor or, in those cities operating under the commission-manager plan, with the manager and referred to the police commission, when a commission exists; and

(2) the applicant has successfully passed the examination required to be held by the police commission and a certificate from the police commission that the applicant has qualified for the

appointment has been filed with the mayor or, in those cities operating under the commission-manager plan with the manager.

History: **En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part); amd. Sec. 714, Ch. 61, L. 2007.**

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.
General powers of Municipal Council, 7-5-4101.
Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4109. Temporary employment for persons doing police work. The mayor of a city may, at any time when considered expedient, employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 715, Ch. 61, L. 2007.**

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which the person is applying for reinstatement may make application within 1 year from the date on which the person's name was removed from the active list of police officers to the police commission of that city or town in which the person last served, and the application must be considered by the police commission within 30 days after receipt of the application.

(2) The commission may not require the applicant to have a physical examination or other examination required of applicants for a position on the police force. If the police commission recommends the reinstatement of the applicant as a member of the police force, the probationary term required of applicants for positions must be dispensed with for the applicant for reinstatement. The mayor shall submit to the city council of the city at its next regular meeting the recommendation of the police commission. If a majority of the city council vote in favor of adopting the recommendation of the commission, the applicant must be immediately reinstated as a police officer in the city or town.

History: **En. Sec. 1, Ch. 205, L. 1939; R.C.M. 1947, 11-1808; amd. Sec. 716, Ch. 61, L. 2007.**

Cross-References

General powers of Municipal Council, 7-5-4101.
Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications are referred to the police commission must be required to successfully undergo an examination before the police commission and to receive a certificate from the commission that the applicant is qualified for appointment for the probationary period to the police force.

(2) An applicant who makes any false statement to the police commission as to the applicant's age or other required qualifications at an examination before the police commission is subject to suspension or dismissal from the police force after trial.

History: **En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part); amd. Sec. 717, Ch. 61, L. 2007.**

Cross-References

Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-32-4112. Qualifications of police officers. A member of a police department on the active list of any city at the time of appointment under this part may not be less than 18 years of age, must be a citizen of the United States, and must meet the minimum qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029.

History: **(1)En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; re-en. Sec. 5108.1, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973; Sec. 11-1817, R.C.M. 1947; (2)En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R.C.M. 1921; amd. Sec. 6, Ch. 119, L.**

1923; re-en. Sec. 5106, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973; amd. Sec. 12, Ch. 335, L. 1974; Sec. 11-1814, R.C.M. 1947; R.C.M. 1947, 11-1814, 11-1817; amd. Sec. 8, Ch. 263, L. 1979; amd. Sec. 1, Ch. 150, L. 1995; amd. Sec. 13, Ch. 506, L. 2007.

Cross-References

Employment standards of Board of Crime Control, 7-32-303.

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.
General powers of Municipal Council, 7-5-4101.
Probationary period for Deputy Sheriff, 7-32-2105.

7-32-4114. Restrictions on activities of police officers. (1) Except as provided in subsection (2), a member of the police force may not hold any other office or be employed in any other department of the city or town government. A member of the police force may not strike, as provided in 39-31-501.

(2) A member of the police force of a third-class city or of a town may be employed in another department of the city or town government. However, the member may not hold political office in the city or town government.

(3) The fact that a person is an officer or member of the police department does not deprive the person's spouse or any member of the person's family of the right to participate in political activity or to hold public or political office.

(4) An officer or member of the police department may participate in political activity if the officer does not do so while on duty or in uniform or if the activity does not otherwise interfere with the performance of duties.

History: En. Secs. 8, 9, 10, Ch. 136, L. 1907; Secs. 3311, 3312, 3313, Rev. C. 1907; re-en. Secs. 5102, 5103, 5104, R.C.M. 1921; re-en. Secs. 5102, 5103, 5104, R.C.M. 1935; R.C.M. 1947, 11-1810(part), 11-1811, 11-1812; amd. Sec. 1, Ch. 385, L. 1981; amd. Sec. 1, Ch. 124, L. 1993; amd. Sec. 6, Ch. 225, L. 2005.

7-32-4115. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

History: En. Sec. 8, Ch. 136, L. 1907; Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R.C.M. 1921; re-en. Sec. 5102, R.C.M. 1935; R.C.M. 1947, 11-1810(part).

Cross-References

Persons exempt from arrest, 46-6-102.

7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section applies to cities and towns not of the first class which have elected to come under the provisions of Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.

(3) Added salary for years of service will be based on the base monthly salary as established in this section and not on the actual current salary.

History: (1)En. Sec. 1, Ch. 55, L. 1935; re-en. Sec. 5108.16, R.C.M. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967;

amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973; amd. Sec. 2, Ch. 438, L. 1975; Sec. 11-1832, R.C.M. 1947; (2)En. Sec. 2, Ch. 55, L. 1935; re-en. Sec. 5108.17, R.C.M. 1935; Sec. 11-1833, R.C.M. 1947; (3)En. Sec. 2, Ch. 266, L. 1967; Sec. 11-1832.1, R.C.M. 1947; R.C.M. 1947, 11-1832, 11-1832.1, 11-1833; amd. Sec. 9, Ch. 263, L. 1979; amd. Sec. 35, Ch. 575, L. 1981.

Cross-References

Classification of municipalities, 7-1-4111.
Minimum wage, 39-3-404.

7-32-4117. Group insurance for police officers — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective police officers;

(b) notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for police officers and their dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Subject to 15-10-420, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy on the taxable value of all taxable property within the city or town.

History: En. 11-1024.3, 11-1024.4 by Secs. 1, 2, Ch. 308, L. 1975; R.C.M. 1947, 11-1024.3, 11-1024.4; amd. Sec. 1, Ch. 88, L. 1981; amd. Sec. 69, Ch. 584, L. 1999; amd. Sec. 78, Ch. 574, L. 2001.

Cross-References

Authorization to levy special taxes and assessments, 7-6-4406.
Police protection association — contributions for group life insurance and representation, 7-32-4122, 7-32-4123.

7-32-4118. Work period — days off duty without loss of compensation. (1) The chief of police may establish the work period for officers and other personnel in the department and may establish a work period other than that provided in 39-3-405 for determining when an employee must be paid overtime compensation. The total hours in all work periods in a calendar year may not exceed 2,080.

(2) Each officer or other employee of the police force in every city of the first and second class shall, in each calendar year, be given a minimum of 104 days off duty without loss of compensation, not including holidays, sick leave, vacation leave, or other types of compensated time off duty.

History: En. Sec. 1, Ch. 53, L. 1931; re-en. Sec. 5108.15, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1957; R.C.M. 1947, 11-1831; amd. Sec. 1, Ch. 562, L. 1983.

Cross-References

Classification of municipalities, 7-1-4111.
Hours of work for Deputy Sheriff of county of first or second class, 7-32-2111.
Overtime compensation, 39-3-405.
Hours — state and municipal governments, 39-4-107.

7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to overtime compensation for hours worked in excess of the work period established by the chief of police under 7-32-4118.

History: En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973; R.C.M. 1947, 11-1832.2; amd. Sec. 2, Ch. 562, L. 1983.

Cross-References

Classification of municipalities, 7-1-4111.
Overtime compensation, 39-3-405.

7-32-4120. Expenditure of state payments by municipality not having police retirement system — annual report. (1) As used in this section, "employee" means a person employed by a municipal police department, including police officers.

(2) A city or town not governed by the provisions of chapter 9 or 19 of Title 19 shall only expend the payment received pursuant to 19-19-305 for police department employee training, for equipment and personnel relating to substance abuse enforcement, or to purchase pensions for employees of its police department.

(3) The city treasurer or town clerk of the cities or towns shall, on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-19-305.

History: En. Sec. 4, Ch. 261, L. 1965; R.C.M. 1947, 11-1837; amd. Sec. 36, Ch. 575, L. 1981; amd. Sec. 1, Ch. 60, L. 1991.

Cross-References

Office of City Treasurer, 7-4-4701.

7-32-4121. Action to recover salary. (1) Actions to recover salaries by members of the police departments of cities must be commenced within 6 months after the cause of action shall have accrued.

(2) No action for unpaid salary can be maintained by members of the police department of cities except for service actually rendered and, if suspended or placed on the eligible list, then only for the days the member of the police department reports for duty.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 11, Ex. L. 1919; re-en. Sec. 9036, R.C.M. 1921; re-en. Sec. 9036, R.C.M. 1935; Sec. 93-2610, R.C.M. 1947; (2)En. Sec. 2, Ch. 11, Ex. L. 1919; re-en. Sec. 9037, R.C.M. 1921; re-en. Sec. 9037, R.C.M. 1935; Sec. 93-2611, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2610, 93-2611, 93-2720.

Cross-References

Commissioner to take wage assignments, 39-3-211.

7-32-4122. Contributions for group life insurance and representation. (1) Unless the police protective association of the city or town chooses not to participate, as provided in 7-32-4123, an employer shall deduct from each police officer's monthly compensation, except that of a police chief, assistant chief, or captain, an amount equal to 1% of the base salary paid to newly confirmed police officers in the city or town. The employer shall pay this amount on a monthly basis to the treasurer of the Montana police protective association to be used to pay premiums on a group life insurance policy for contributing police officers of participating city and town associations and to defray expenses incurred by the association when representing members of the plan.

(2) An employer may not deduct the amount provided for in subsection (1) from the monthly compensation of a police chief, assistant chief, or captain unless that person notifies the person's employer in writing to make the deduction.

(3) A person who contributes under this section is a full member of the Montana police protective association and is entitled to all membership rights and benefits, including those benefits provided in subsection (1).

(4) For the purposes of this section, "police officer" means an officer who participates in the police officers' retirement system under Title 19, chapter 9.

History: En. Sec. 1, Ch. 403, L. 1989; amd. Sec. 1, Ch. 179, L. 2005.

Cross-References

Group insurance for police officers — funding, 7-32-4117.

State firefighters' association — group life insurance deduction, 19-13-601.

7-32-4123. Nonparticipation. (1) The members of a city or town police protective association may by a vote of three-fourths of the membership cease the participation of all the members in the provision of group life insurance through salary deductions. Salary deductions for payment of group life insurance premiums and representation may not be made by the city or town of the nonparticipating association. An association may resume participation by a vote of three-fourths of the membership of the city or town police protective association.

(2) Notice of nonparticipation or resumption of participation must be provided to the governing body of the city or town and to the Montana police protective association.

History: En. Sec. 2, Ch. 403, L. 1989.

7-32-4124 through 7-32-4130 reserved.

7-32-4131. Compensation and allowance for sick or injured police officers. Whenever a member of a police department in a city or town is, on account of sickness or disability suffered or sustained while a member of the police department and not caused or brought on by dissipation or abuse, confined to any hospital or the officer's home and requires medical attention and care, the police officer may be allowed, by the city council, the police officer's salary during the absence and an amount equal to the police officer's expenses while confined for the injury or sickness.

History: En. Sec. 6, Ch. 100, L. 1927; amd. Sec. 6, Ch. 120, L. 1929; re-en. Sec. 5108.6, R.C.M. 1935; R.C.M. 1947, 11-1822; amd. Sec. 718, Ch. 61, L. 2007.

Cross-References

General powers of Municipal Council, 7-5-4101.
Workers' compensation, Title 39, ch. 71.

7-32-4132. Payment of partial salary amount of officer injured in performance of duty. (1) A member of a municipal law enforcement agency of a municipality contracting for retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury.

History: En. 11-1822.1 by Sec. 1, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.1; amd. Sec. 1, Ch. 290, L. 1979; amd. Sec. 1, Ch. 251, L. 1993; amd. Sec. 2, Ch. 562, L. 1999.

Cross-References

Classification of municipalities, 7-1-4111.
Workers' compensation, Title 39, ch. 71.

7-32-4133. Repealed. Sec. 5, Ch. 290, L. 1979.

History: En. 11-1822.2 by Sec. 2, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.2.

7-32-4134. Repealed. Sec. 5, Ch. 290, L. 1979.

History: En. 11-1822.3 by Sec. 3, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.3.

7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a partial salary amount under 7-32-4132 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 19. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

History: En. 11-1822.4 by Sec. 4, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.4; amd. Sec. 2, Ch. 290, L. 1979.

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.
Powers and duties of Mayor related to administration and executive functions, 7-5-4102.

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality and supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of the officer's partial salary amount under 7-32-4132 must be discontinued if the officer refuses to perform the light police duty when it is available and offered. The light duty must be consistent with the officer's status as a law enforcement officer.

(2) With the officer's consent, the officer may be transferred to another department or agency within the municipality.

History: En. 11-1822.5 by Sec. 5, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.5; amd. Sec. 3, Ch. 290, L. 1979; amd. Sec. 719, Ch. 61, L. 2007.

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time of injury, the balance of the probationary time must be suspended until the officer returns to regular duty or is discharged for cause.

History: En. 11-1822.6 by Sec. 6, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.6; amd. Sec. 720, Ch. 61, L. 2007.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

History: En. 11-1822.7 by Sec. 7, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.7.

7-32-4139. Repealed. Sec. 3, Ch. 198, L. 2005.

History: En. Sec. 1, Ch. 337, L. 1999.

7-32-4140 through 7-32-4150 reserved.

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

Cross-References

Municipal commission-manager government, Title 7, ch. 3, part 43.

Municipalities, Title 7, ch. 4, part 41.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of an appeal under 7-32-4155 shall continue to serve on the commission for that appeal until a decision has been made; a new member may not sit on the commission for business.

(2) The compensation of the members of a board must be fixed by the city council or commission, not to exceed $10 per day or more than $50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979; amd. Sec. 3, Ch. 468, L. 1993.

Cross-References

Compensation and duties of city employees, 7-5-4110.

Conduct of Municipal Council business, 7-5-4121.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109, 7-32-4160, and 7-32-4161, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(11); amd. Sec. 27, Ch. 370, L. 1987; amd. Sec. 4, Ch. 468, L. 1993.

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

Cross-References

Structure of Department of Public Safety — duties, 7-32-103.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

7-32-4155. Role of police commission in hearing and deciding appeals brought by police officers. (1) The police commission shall hear and decide appeals brought by any member or officer of the police department who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.

(2) The police commission shall, at the time set for hearing an appeal of a police officer, hear and determine the appeal according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 5, Ch. 468, L. 1993; amd. Sec. 721, Ch. 61, L. 2007.

Cross-References

Department of Public Safety — hearing required for discharge of subordinate employee, 7-32-107.
Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.
Montana Rules of Evidence, Title 26, ch. 10.

7-32-4156. Appeals to be in writing. An appeal brought by any member of the police force must be in writing in the form required by the police commission, and a copy must be served upon the mayor, city manager, or chief executive at least 30 days before the time fixed for the hearing of the appeal.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2); amd. Sec. 6, Ch. 468, L. 1993.

Cross-References

Sheriffs — written notice of termination of deputy's employment required, 7-32-2108.

7-32-4157. Rights of police officer. The appealing police officer has the right to be present at the hearing in person and by counsel and to be heard and to give and furnish evidence in the police officer's appeal.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 7, Ch. 468, L. 1993.

Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

7-32-4158. Police commission hearings open to public. All hearings must be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 8, Ch. 468, L. 1993.

Cross-References

Right to know, Art, II, sec. 9, Mont. Const.

7-32-4159. Subpoena authority of police commission. The presiding officer or acting presiding officer of the police commission may issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person served with a subpoena is bound to attend in obedience to the subpoena. The police commission has the same authority to enforce obedience to the subpoena and to punish the disobedience to the subpoena as is possessed by a judge of the district court in similar cases. However, punishment for disobedience is subject to review by the district court of the proper county.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4); amd. Sec. 722, Ch. 61, L. 2007.

Cross-References

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).
Subpoenas and witnesses, Title 26, ch. 2.

7-32-4160. Decision by police commission. The police commission shall, after the conclusion of the hearing, decide the appeal and must have the power, by a decision of a majority of the commission, to sustain, modify, or overrule the disciplinary order of the mayor, city manager, or chief executive.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6); amd. Sec. 9, Ch. 468, L. 1993.

Cross-References

Duties of City Clerk related to city records and papers, 7-4-4502.
Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4161. Enforcement of decision. The mayor shall make an order enforcing the decision of the police commission. The decision or order is subject to review by the district court of the proper county on all questions of fact and all questions of law.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(7); amd. Sec. 10, Ch. 468, L. 1993.

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.
Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4162. Repealed. Sec. 12, Ch. 468, L. 1993.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(9).

7-32-4163. Repealed. Sec. 12, Ch. 468, L. 1993.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4164. Right to appeal. A member of the police force who is disciplined, suspended, removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right of appeal:

(1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the member is covered by a collective bargaining agreement; or

(2) to the police commission. A final decision of the police commission may be appealed to the district court of the proper county. The district court has jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force. A suit to review a decision or an order or for reinstatement to office may not be maintained unless the suit is begun within a period of 60 days after the decision by the police commission has been filed with the city clerk.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(8); amd. Sec. 11, Ch. 468, L. 1993.

Part 42
Municipal Detention Centers

Part Cross-References

County jails, Title 7, ch. 32, part 22.

7-32-4201. Municipal detention centers authorized. The city or town council has power to establish and maintain a detention center, as defined in 7-32-2120, for the confinement of persons convicted of violating the ordinances of the city or town and to make rules for the government of the same.

History: En. Subd. 35, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.34, R.C.M. 1935; R.C.M. 1947, 11-937; amd. Sec. 28, Ch. 461, L. 1989.

Cross-References

General powers of Municipal Council, 7-5-4101.
Detention centers, 7-32-2201.

7-32-4202. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 53, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.52, R.C.M. 1935; R.C.M. 1947, 11-955.

7-32-4203. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 52, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.51, R.C.M. 1935; R.C.M. 1947, 11-954.

Part 43
Powers of Municipal Council Related to Law Enforcement

Part Cross-References

Law Enforcement, Title 44.

7-32-4301. Regulations governing arrest authorized. The city or town council has power to make regulations authorizing the police of the city or town to make arrests of persons charged with crime:

(1) within the limits of the city or town;
(2) within 5 miles thereof; and
(3) along the line of water supply of the city or town.

History: En. Subd. 58, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.57, R.C.M. 1935; R.C.M. 1947, 11-960.

Cross-References

Council rules and discipline, 7-5-4103.

7-32-4302. Control of disturbances of the peace. Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication (subject to the limits established in 53-24-106), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

History: En. Subd. 25, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.24, R.C.M. 1935; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975; R.C.M. 1947, 11-927.

Cross-References

Control of nuisances, 7-5-4104.

Conduct disruptive of public order, Title 45, ch. 8, part 1.

7-32-4303. Control of shoplifting. The city or town council may define shoplifting and punish persons found guilty of shoplifting.

History: En. 11-990 by Sec. 5, Ch. 274, L. 1974; R.C.M. 1947, 11-990; amd. Sec. 10, Ch. 263, L. 1979; amd. Sec. 253, Ch. 800, L. 1991.

Cross-References

Civil penalty for shoplifting, 27-1-718.

7-32-4304. Control of disorderly conduct. The city or town council has power to restrain and punish persons guilty of disorderly conduct and aggressive solicitation, as defined by ordinance, that is included in the offense of disorderly conduct.

History: En. Subd. 34, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.33, R.C.M. 1935; R.C.M. 1947, 11-936; amd. Sec. 3, Ch. 561, L. 2003.

Cross-References

Council rules and discipline, 7-5-4103.

Conduct disruptive of public order, Title 45, ch. 8, part 1.

7-32-4305. Repealed. Sec. 2, Ch. 589, L. 1985.

History: En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).

7-32-4306 through 7-32-4310 reserved.

7-32-4311. Maintenance of police telegraph. The city or town council has power to maintain a police telegraph.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

Cross-References

Criminal justice information, Title 44, ch. 5.

CHAPTER 33
FIRE PROTECTION

Parts 1 through 19 reserved

Part 20 — Fire Chief

7-33-2001. Fire chief — powers and duties.

Part 21 — Rural Fire Districts

7-33-2101. Rural fire districts authorized — petition.
7-33-2102. Notice of hearing.
7-33-2103. Hearing on petition — decision.
7-33-2104. Operation of fire districts.
7-33-2105. Powers and duties of trustees.
7-33-2106. Details relating to board of trustees of fire district.
7-33-2107. Contracts for fire protection services.
7-33-2108. Mutual aid agreements — request if no agreement exists — definitions.
7-33-2109. Tax levy, debt incurrence, and bonds authorized — voted levy for volunteer firefighters' disability income coverage.
7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.
7-33-2111. Fire district capital improvement fund authorized.

7-33-2112 through 7-33-2119 reserved.
7-33-2120. Consolidation of fire districts — mill levy limitations.
7-33-2121. Renumbered 7-33-2141.
7-33-2122. Repealed.
7-33-2123. Renumbered 7-33-2143.
7-33-2124. Renumbered 7-33-2144.
7-33-2125. Annexation of adjacent territory not contained in a fire district.
7-33-2126. Annexation of adjacent territory contained in a fire district.
7-33-2127. Withdrawal by owner of individual tract adjacent to municipality.
7-33-2128. Dissolution of fire district.
7-33-2129. Annexation of rural fire district property by municipality — responsibility for debt.
7-33-2130 through 7-33-2140 reserved.
7-33-2141. Division of fire district authorized.
7-33-2142. Division of district — petition — plan for division.
7-33-2143. Decision on petition for division — protest.
7-33-2144. Distribution of assets and liabilities following division.

Part 22 — Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources.
7-33-2202. Functions of county governing body.
7-33-2203. County rural fire chief.
7-33-2204. Repealed.
7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs.
7-33-2206. Violations.
7-33-2207. Repealed.
7-33-2208. Fire control powers — liability.
7-33-2209. Finance of fire control activities — voted levy for volunteer firefighters' disability income insurance.
7-33-2210. State to be reimbursed for wildland fire suppression activities in noncooperating counties.
7-33-2211. Levy against certain properties prohibited.
7-33-2212. Activity restrictions in high fire hazard areas.

Part 23 — Fire Protection in Unincorporated Places

7-33-2301. Repealed.
7-33-2302. Repealed.
7-33-2303 through 7-33-2310 reserved.
7-33-2311. Fire companies authorized.
7-33-2312. Organization of fire company.
7-33-2313. Repealed.
7-33-2314. Military exemption for firefighters.
7-33-2315. Certificate of membership in fire company.
7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.

Part 24 — Fire Service Areas

7-33-2401. Fire service area — establishment — alteration — dissolution.
7-33-2402. Area services.
7-33-2403. Operation of fire service area — voted levy for volunteer firefighters' disability income insurance.
7-33-2404. Financing of fire service area — fee on structures — fee on undeveloped land.
7-33-2405. Mutual aid agreements — request if no agreement exists — definitions.

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Part 41 — Municipal Fire Departments

7-33-4101. Fire department authorized and required.
7-33-4102. Applicability of part.
7-33-4103. Composition of fire department.
7-33-4104. Duties of chief and assistant chief of fire department.
7-33-4105. Appointment of chief engineer of fire department.
7-33-4106. Appointment of firefighters.
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7-33-4108. Physical examination.
7-33-4109. Supplementary volunteer fire department authorized for cities of second class — voted levy for volunteer firefighters' disability income insurance.
7-33-4110. Volunteer companies not affected.
7-33-4111. Tax levy for volunteer fire departments — voted levy for volunteer firefighters' disability income insurance.
7-33-4112. Mutual aid agreements — request if no agreement exists — definitions.
7-33-4113. Personnel of fire department not considered municipal officers.
7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports.
7-33-4115 through 7-33-4120 reserved.
7-33-4121. Rules governing employment in fire departments.

7-33-4122. Term of appointment of firefighters — probationary period.
7-33-4123. Authority to suspend firefighters.
7-33-4124. Suspension procedure.
7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority.
7-33-4126. Repealed.
7-33-4127. Compensation of fire department personnel.
7-33-4128. Minimum wages of firefighters in cities of first and second class.
7-33-4129. Repealed.
7-33-4130. Group insurance for firefighters — funding.
7-33-4131. Firefighter's rights in event of city-county consolidation.
7-33-4132. Repealed.
7-33-4133. Payment of partial salary to firefighter injured in performance of duty.

Part 42 — Powers of Municipal Council Related to Fire Services

7-33-4201. Establishment of fire department and fire alarm system.
7-33-4202. Provision for fire equipment.
7-33-4203. Repealed.
7-33-4204. Inspection and regulation of fire hazards.
7-33-4205. Regulation of explosives and inflammable materials.
7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents.
7-33-4207. Regulation of industries with fire-causing potential.
7-33-4208. Adoption of fire code.

Parts 43 and 44 reserved

Part 45 — Provisions Applicable to All Local Governmental Fire Agencies

7-33-4501. Legal representation for firewarden, firefighter, or employee — local governmental fire agency.

Chapter Cross-References

Firefighters' unified retirement, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
State fire prevention and investigation program, Title 50, ch. 3.
Fire protection equipment, Title 50, ch. 39.
Fire safety in public buildings, Title 50, ch. 61.
Fire hazards, Title 50, ch. 62.
Investigation of fires, Title 50, ch. 63.

Parts 1 through 19 reserved

Part 20
Fire Chief

7-33-2001. Fire chief — powers and duties. (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

(a) development and implementation of agency programs and procedures;

(b) performance of agency personnel;

(c) preventing outbreak of fires;

(d) minimizing danger to persons and damage to property caused by fires; and

(e) providing and managing emergency services that are established by the agency and that are consistent with national standards. These services may include but are not limited to:

(i) fire suppression;

(ii) medical aid;

(iii) hazardous materials response;

(iv) ambulance service; and

(v) extrication from vehicles.

(2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.

(3) The fire chief serves under the direction of the trustees, if trustees have been designated to manage the fire agency under the provisions of this chapter. If the governing body retains management, then the fire chief serves under the direction of the governing body.

(4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.

(5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.

(6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

(7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

(a) enter any property;

(b) prohibit any person, vehicle, or thing from approaching the scene;

(c) remove or cause to be removed from the scene of the fire or other emergency any person, vehicle, or thing that the chief determines may interfere with the operations of the agency.

(8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.

(b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.

(c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

(9) (a) The fire chief may establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:

(i) regular examination of fire hazards; and

(ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.

(b) The fire chief may establish a formal fire inspection program as authorized by the department of justice under 50-61-102.

(10) The fire chief shall report all fires to the department of justice and shall use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.

(11) The fire chief is responsible for establishing and maintaining a training program for the agency and may use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.

(12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments.

History: En. Sec. 1, Ch. 167, L. 2007; amd. Sec. 1, Ch. 171, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 171 in (1)(e) near end of first sentence after "national" deleted "and other appropriate"; in (3) near beginning after "direction of the" substituted "trustees, if trustees have been designated to manage the fire agency under the provisions of this chapter. If the governing body retains management, then the fire chief serves under the direction of the governing body" for "governing body that has created the governmental fire agency"; and made minor changes in style. Amendment effective October 1, 2009.

Part 21
Rural Fire Districts

7-33-2101. Rural fire districts authorized — petition. (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or, subject to subsection (2), incorporated third-class city or town upon presentation of a petition in writing signed by the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.

(2) (a) Third-class cities and towns may be included in the district upon approval by the city or town governing body.

(b) A third-class city or town may withdraw from a district 2 years after providing to the board of county commissioners notice of intent to withdraw.

History: **En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 499, L. 2007.**

Cross-References

General authority of County Commissioners, 7-5-2101.

Assessment and map books, Title 15, ch. 8, part 7.

7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 or as provided in 7-1-4129 if the proposed district or a portion of the proposed district is in an incorporated third-class city or town to each registered voter and real property owner residing in the proposed district; and

(2) by publishing the notice as provided in 7-1-2121 or as provided in 7-1-4127 if the proposed district or portion of the proposed district is in an incorporated third-class city or town.

History: **En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 33, Ch. 349, L. 1985; amd. Sec. 64, Ch. 354, L. 2001; amd. Sec. 2, Ch. 499, L. 2007.**

Cross-References

Requirements for compliance with notice provisions, 2-3-104.

County printing, Title 18, ch. 7, part 4.

7-33-2103. Hearing on petition — decision. (1) (a) The board shall hear the petition at the time set or at any time within 5 days of the time set if reasonable notice of the postponement is given. The board may establish the district unless it determines that the petition bears insufficient signatures or, if originally sufficient, that by reason of written withdrawals of signatures it has become insufficient.

(b) Signatures may not be withdrawn fewer than 20 days before the date set for adoption of the petition.

(2) The board may adjust the boundaries of the proposed district to reflect the written request of any real property owner who resides in the proposed district for subtraction or annexation of parcels of the property owner's land adjacent to the boundary line of the proposed district. The written request must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing.

History: **En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 470, L. 1985; amd. Sec. 3, Ch. 499, L. 2007.**

Cross-References

Informal proceedings, 2-4-604.

7-33-2104. Operation of fire districts. When a board of county commissioners establishes a fire district in any unincorporated territory or incorporated third-class city or town, the commissioners:

(1) may contract with a city, town, private fire company, or other public entity to furnish all fire protection services for property within the district; or

(2) shall appoint five qualified trustees to govern and manage the fire district.

History: **En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 4, Ch. 499, L. 2007.**

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-33-2105. Powers and duties of trustees. (1) The trustees:

(a) shall prepare and adopt suitable bylaws;

(b) have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities, including real property and emergency medical services and equipment, for the protection of the district;

(c) may appoint and form fire companies that have the same duties, exemptions, and privileges as other fire companies for retirement purposes only;

(d) shall prepare annual budgets and request special levies for the budgets. The budget laws relating to county budgets must, as far as applicable, apply to fire districts.

(e) may enter into contracts as provided in 7-33-2107; and

(f) may pledge income to secure financing of the district as provided in 7-33-2109.

(2) All money received by the trustees must be deposited in the county treasurer's office and credited to the fire district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 144, L. 1991; amd. Sec. 1, Ch. 443, L. 2001; amd. Sec. 5, Ch. 499, L. 2007.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-33-2106. Details relating to board of trustees of fire district. (1) (a) The five trustees initially appointed by the county commissioners hold staggered terms of office until their successors are elected or appointed and qualified as provided in this section.

(b) The initial trustees' terms of office must be drawn by lot and include:

(i) 3 years for one trustee;

(ii) 2 years for two trustees; and

(iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees must be elected as provided in 13-1-104(3), 13-1-401, and subsection (3) of this section or appointed as provided in subsection (4) of this section. The term of office is 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies occurring during the term of office of a trustee must be made by the county governing body and appointees shall hold office until the next regular election. An elector, as defined in Title 13, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nominating petition for a position. If a nomination is not made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices. A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.

(5) The trustees shall organize by choosing presiding officers and appointing one member to act as secretary.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 213, L. 1979; amd. Sec. 390, Ch. 571, L. 1979; amd. Sec. 1, Ch. 27, L. 1981; amd. Sec. 1, Ch. 502, L. 1983; amd. Sec. 23, Ch. 250, L. 1985; amd. Sec. 1, Ch. 146, L. 1991; amd. Sec. 6, Ch. 591, L. 1991; amd. Sec. 6, Ch. 254, L. 1999; amd. Sec. 6, Ch. 499, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-33-2107. Contracts for fire protection services. (1) The trustees of a fire district may enter into contracts for fire protection services.

(2) All money received from contracts must be deposited in the county treasurer's office and credited to the fire district fund holding the contracts.

(3) The relationship between the fire district and the entity with which the district has contracted is that of an independent contractor.

History: (1) thru (4)En. Sec. 1, Ch. 107; L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; Sec. 11-2010, R.C.M. 1947; (5)En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; Sec. 11-2008, R.C.M. 1947; R.C.M. 1947, 11-2008(part), 11-2010(c); amd. Sec. 7, Ch. 499, L. 2007.

Cross-References

Duties of County Treasurer, 7-6-2111.
Interlocal agreements, Title 7, ch. 11, part 1.
Contracts, Title 28, ch. 2, 3.

7-33-2108. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against disasters, incidents, or emergencies.

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

(a) other fire districts;
(b) unincorporated municipalities;
(c) incorporated municipalities;
(d) state agencies;
(e) private fire prevention agencies;
(f) federal agencies;
(g) fire service areas;
(h) governing bodies of other political subdivisions in Montana; and
(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", and "emergencies" have the meanings provided in 10-3-103.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(d); amd. Sec. 2, Ch. 149, L. 1993; amd. Sec. 1, Ch. 46, L. 1997; amd. Sec. 1, Ch. 292, L. 2007.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-33-2109. Tax levy, debt incurrence, and bonds authorized — voted levy for volunteer firefighters' disability income coverage. (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property within a rural fire district for the purpose of purchasing disability income insurance coverage for the volunteer firefighters of the district as provided in 7-6-621.

(3) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(1)(d), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

(4) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

(5) The amount of debt incurred pursuant to subsection (3) and the amount of bonds issued pursuant to subsection (4) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(6) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 459, L. 1991; amd. Sec. 1, Ch. 170, L. 1995; amd. Sec. 70, Ch. 584, L. 1999; amd. Sec. 24, Ch. 29, L. 2001; amd. Sec. 2, Ch. 443, L. 2001; amd. Sec. 2, Ch. 485, L. 2007; amd. Sec. 8, Ch. 499, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.
Authorization for county mill levy, 7-6-2501.

7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-17-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: En. Sec. 1, Ch. 193, L. 1979.

Cross-References

City-county consolidation — option 1, Title 7, ch. 3, part 11.
City-county consolidation — option 2, Title 7, ch. 3, parts 12 and 13.

7-33-2111. Fire district capital improvement fund authorized. The trustees of a fire district may establish a capital improvement fund in accordance with the provisions of Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 224, L. 1991; amd. Sec. 3, Ch. 443, L. 2001; amd. Sec. 6, Ch. 35, L. 2003.

7-33-2112 through 7-33-2119 reserved.

7-33-2120. Consolidation of fire districts — mill levy limitations. (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they vote to consolidate, the boards of trustees shall also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 or as provided in 7-1-4127 if the district or part of the district is in an incorporated third-class city or town in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Real property owners in each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice the owners of 40% or more of the real property in an existing district and owners of property representing 40% or more of the taxable value of property in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

(5) The consolidation of two or more rural fire districts pursuant to this section results in the creation of a new rural fire district for the purposes of determining mill levy limitations.

History: En. Sec. 1, Ch. 338, L. 1989; amd. Sec. 9, Ch. 499, L. 2007.

7-33-2121. Renumbered 7-33-2141. Code Commissioner, 2007.

7-33-2122. Repealed. Sec. 25, Ch. 499, L. 2007.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2123. Renumbered 7-33-2143. Code Commissioner, 2007.

7-33-2124. Renumbered 7-33-2144. Code Commissioner, 2007.

7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory within or outside of the limits of an incorporated third-class city or town that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 40% or more of the real property within the proposed area to be annexed and owners of property representing 40% or more of the taxable value of property within the proposed area to be annexed must be presented to the board of trustees of the district for approval. If the proposed annexation is approved by the board of trustees, the petition must be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on the petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the area proposed to be annexed is within an incorporated third-class city or town.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by at least 40% of the owners of real property in the area proposed for annexation and owners of property representing 40% or more of the taxable value of the property in the area proposed for annexation is presented at the hearing, in which case the annexation must be disapproved.

(3) The annexed territory is liable for any outstanding warrant and bonded indebtedness of the original district.

(4) (a) Territory that is within the limits of an incorporated third-class city or town may be annexed only upon the approval of the city or town governing body.

(b) A third-class city or town may withdraw from the district territory that has been annexed under this section 2 years after providing to the board of county commissioners notice of intent to withdraw.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd.

Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(a); amd. Sec. 1, Ch. 678, L. 1983; amd. Sec. 65, Ch. 354, L. 2001; amd. Sec. 14, Ch. 499, L. 2007.

Cross-References

Assessment maps and books, Title 15, ch. 8, part 7.

7-33-2126. Annexation of adjacent territory contained in a fire district. (1) Adjacent territory that is already a part of a fire district may withdraw from the fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by 40% or more of the owners of real property within the area proposed to be transferred and owners of 40% or more of the taxable value of the property within the area proposed to be transferred must be presented to the county commissioners, asking that the area be transferred to and included in any other organized fire district to which the area is adjacent. The petition must describe the change of boundaries to be affected by the proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in 7-33-2142. The transfer must be allowed unless protests are presented at the hearing by the owners of 40% or more of the real property in either district and owners of property representing 40% or more of the taxable value in either district.

(2) The transfer may be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(b); amd. Sec. 15, Ch. 499, L. 2007.

Cross-References

Assessment maps and books, Title 15, ch. 8, part 7.

7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure provided in 7-33-2142 and 7-33-2143, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the presiding officer of the trustees of the fire district or, if there are no trustees, to the board of county commissioners of the owner's intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to the petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(5); amd. Sec. 723, Ch. 61, L. 2007; amd. Sec. 16, Ch. 499, L. 2007.

7-33-2128. Dissolution of fire district. (1) Subject to subsection (2), a fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition for dissolution signed by the owners of 40% or more of the real property in the area and owners of property representing 40% or more of the taxable value of property in the area. The procedure and requirements provided in 7-33-2101 through 7-33-2103 apply to requests for dissolution of fire districts.

(2) A board of county commissioners may not dissolve a fire district that includes territory within the limits of an incorporated third-class city or town unless the dissolution is approved by the governing body of the city or town.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(2); amd. Sec. 17, Ch. 499, L. 2007.

Cross-References

General authority of County Commissioners, 7-5-2101.
Division of county into districts, 7-5-2103.

7-33-2129. Annexation of rural fire district property by municipality — responsibility for debt. (1) If a municipality annexes property from a rural fire district, the annexed property is liable for any bonded debt of the rural fire district or for secured debt incurred by the district for the purchase of real or personal property existing as of the date the annexation proceeding was commenced to the same extent as it would have been liable if not withdrawn.

(2) A municipality shall:

(a) offset the municipal mills levied on the annexed property by the mills levied on the property for bonded or secured debt; or

(b) annually appropriate funds to the rural fire district in an amount equal to the mills levied on the annexed property for bonded or secured debt.

History: En. Sec. 2, Ch. 459, L. 1991; amd. Sec. 1, Ch. 95, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 95 in (1) near middle after "district" inserted language adding municipality's liability for secured debt relative to the purchase of property and substituted "date the annexation proceeding was commenced" for "date of annexation"; in (2) following "municipality" substituted "shall" for "may"; in (2)(a) and (2)(b) substituted "bonded or secured debt" for "bonded indebtedness"; and made minor changes in style. Amendment effective October 1, 2009.

7-33-2130 through 7-33-2140 reserved.

7-33-2141. Division of fire district authorized. Fire districts may be divided as provided in 7-33-2142 through 7-33-2144.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec; 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M; 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd; Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch; 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 10, Ch. 499, L. 2007; Sec. 7-33-2121, MCA 2005; redes. 7-33-2141 by Code Commissioner, 2007.

7-33-2142. Division of district — petition — plan for division. (1) (a) A fire district's board of trustees may vote to divide the district upon an affirmative vote of the board and upon receipt of a petition signed by the owners of 40% or more of the real property within the area proposed to be detracted from the original district and owners of property representing 40% or more of the taxable value of property in the area proposed to be detracted from the original district.

(b) The petition must describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(2) At the time it votes to divide, the board shall adopt a division plan that contains:

(a) a timetable for division, including the effective date, that must be after the time allowed for protests to the division;

(b) the names of the new rural fire districts;

(c) the boundary maps of the new districts;

(d) the estimated financial impact of the division on an owner of a home valued at $100,000; and

(e) a method for the fair and equitable division of the assets and liabilities of the original district among the new districts.

(3) The board of trustees shall forward the plan to the board of county commissioners in the county where the districts are located.

(4) Within 21 days of receipt of the plan, the board of county commissioners shall set a date for a public hearing on the division and shall give notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the proposed detracted area is within the limits of an incorporated city or town.

History: En. Sec. 11, Ch. 499, L. 2007.

Cross-References

Division of county into districts, 7-5-2103.

7-33-2143. Decision on petition for division — protest. The petition must be granted and the original districts must be divided into separate districts unless at the time of the hearing on the petition protests are presented by the owners of 40% or more of the real property in the entire original district and owners of property representing 40% or more of the taxable value of property in the entire original district. If the required number of protests are presented, the petition for division may not be approved.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec; 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M; 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd; Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch; 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 12, Ch. 499, L. 2007; Sec. 7-33-2123, MCA 2005; redes. 7-33-2143 by Code Commissioner, 2007.

Cross-References

Division of county into districts, 7-5-2103.

7-33-2144. Distribution of assets and liabilities following division. (1) Upon the division of districts, the assets and liabilities of the original rural fire district must be distributed in accordance with the division plan as provided in 7-33-2142.

(2) Any detracted area is liable for any existing warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec; 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M; 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd; Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch; 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 13, Ch. 499, L. 2007; Sec. 7-33-2124, MCA 2005; redes. 7-33-2144 by Code Commissioner, 2007.

Cross-References

Nature of general obligation bonds, 7-7-2205.

Assessment — market value standard — exceptions, 15-8-111.

Part 22
Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources. For the purpose of protection and conservation of range, farm, and forest resources and of the prevention of soil erosion, the county governing body may perform the functions provided in this part.

History: En. Sec. 1, Ch. 173, L. 1945; amd. Sec. 12, Ch. 397, L. 1977; R.C.M. 1947, 28-601.

Cross-References

Protection of forest resources, Title 76, ch. 13, part 1.

Conservation districts, Title 76, ch. 15.

7-33-2202. Functions of county governing body. (1) The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section.

(2) The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

(3) The governing body shall appoint a county rural fire chief and as many district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, that it considers necessary.

(4) Pursuant to 76-13-105(3), the county governing body shall, within the limitations of 7-33-2205, 7-33-2206, 7-33-2208, and 7-33-2209, either:

(a) directly protect from fire land in the county that is not in a wildland fire protection district, as provided in 76-13-204, or under the protection of a municipality, state agency, or federal agency; or

(b) enter into an agreement for wildland fire protection with a recognized agency, as that term is defined in 76-13-102.

(5) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;
(d) state agencies;
(e) private fire prevention agencies;
(f) federal agencies;
(g) fire service areas;
(h) governing bodies of other political subdivisions in Montana; or
(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(6) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part); amd. Sec. 1, Ch. 615, L. 1983; amd. Sec. 2, Ch. 46, L. 1997; amd. Sec. 2, Ch. 292, L. 2007; amd. Secs. 18, 26, Ch. 499, L. 2007.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-2203. County rural fire chief. The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who is not entitled to additional compensation for the duties hereby imposed.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

Cross-References

County officers in general, Title 7, ch. 4, part 22.

7-33-2204. Repealed. Sec. 25, Ch. 499, L. 2007.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) The county governing body may in its discretion establish fire seasons annually, during which a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any residential or commercial property, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit or permission to ignite or set a fire from the recognized protection agency for that protection area.

(2) A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.

(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire, as provided in 50-63-103.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(1); amd. Sec. 1, Ch. 273, L. 2003; amd. Sec. 1, Ch. 492, L. 2005; amd. Sec. 19, Ch. 499, L. 2007.

Cross-References

Control of timber slash and debris, Title 76, ch. 13, part 4.

7-33-2206. Violations. A person who ignites or sets a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or open fire on any residential or commercial property, forest, range, or cropland subject to the provisions of this part without first having obtained a written permit or permission from the recognized protection agency for that protection area to ignite or set the fire is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(2); amd. Sec. 2, Ch. 492, L. 2005; amd. Sec. 20, Ch. 499, L. 2007.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-33-2207. Repealed. Sec. 25, Ch. 499, L. 2007.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(3).

7-33-2208. Fire control powers — liability. (1) Any county rural fire chief, district rural fire chief or deputy, or fire service area or fire company fire chief or deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county, rural district, fire company, or fire service area are immune from suit for injury to persons or property resulting from actions taken to suppress fires under 10-3-209 or this section. An entity or individual listed in this section is also immune from suit for injury to persons or property resulting from a determination not to provide assistance requested pursuant to 10-3-209.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(4); amd. Sec. 1, Ch. 75, L. 1989; amd. Sec. 3, Ch. 46, L. 1997.

Cross-References

Criminal trespass to property, 45-6-203.

7-33-2209. Finance of fire control activities — voted levy for volunteer firefighters' disability income insurance. (1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax for the purposes of subsection (1).

(3) Subject to 15-10-425, the county governing body may levy a tax for the purpose of purchasing disability income insurance coverage for volunteer firefighters of volunteer rural fire control crews and county volunteer fire companies as provided in 7-6-621.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(5); amd. Sec. 1, Ch. 733, L. 1991; amd. Sec. 71, Ch. 584, L. 1999; amd. Sec. 79, Ch. 574, L. 2001; amd. Sec. 3, Ch. 485, L. 2007.

Cross-References

Authorization for county mill levy, 7-6-2501.

7-33-2210. State to be reimbursed for wildland fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for wildland fire protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a wildland fire emergency on land in that county that is not in a wildland fire protection district, as provided in 76-13-204, or protected through an agreement with a recognized agency, as provided in 7-33-2202(4)(b).

History: En. 28-605 by Sec. 15, Ch. 397, L. 1977; R.C.M. 1947, 28-605; amd. Sec. 21, Ch. 499, L. 2007.

Cross-References

Cooperative agreements with owners and lessees of land for fire protection, 76-13-136.

7-33-2211. Levy against certain properties prohibited. The levy authorized by this part may not be assessed against properties located within the incorporated boundaries of a city or town.

History: En. Sec. 2, Ch. 733, L. 1991.

Cross-References

Incorporated city or town defined, 19-11-101.

7-33-2212. Activity restrictions in high fire hazard areas. (1) A board of county commissioners may designate areas on private land or on land that is not under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas.

(2) Except as provided in 87-3-106(2), in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease operations or activities or to adjust working hours to less critical periods of the day.

(3) The presiding officer of the board may control ingress and egress into a high fire hazard area if an emergency or disaster is declared under the provisions of Title 10, chapter 3, part 4.

(4) (a) An entity that is conducting official business, an entity having actual residence as a permanent or principal place of abode in the designated area, or an entity engaged in

employment that does not present a fire hazard must be allowed ingress and egress unless there is a significant risk to human health or safety.

(b) For the purposes of this section, "official business" includes but is not limited to the functions of governmental agencies and the activities of utilities, cooperatives, and telecommunications providers to operate, construct, repair, and maintain utility facilities that are essential to the public.

History: **En. Sec. 1, Ch. 450, L. 2007.**

Part 23
Fire Protection in Unincorporated Places

7-33-2301. Repealed. Sec. 2, Ch. 310, L. 1993.

History: **En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907; re-en. Sec. 5141, R.C.M. 1921; re-en. Sec. 5141, R.C.M. 1935; R.C.M. 1947; 11-2001.**

7-33-2302. Repealed. Sec. 2, Ch. 310, L. 1993.

History: **En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R.C.M. 1921; re-en. Sec. 5142, R.C.M. 1935; R.C.M. 1947, 11-2002.**

7-33-2303 through 7-33-2310 reserved.

7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, providing the date of organization, name, officers, and roll of active and honorary members or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1.

(2) A fire company is not allowed more than 28 certificate members.

History: **En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R.C.M. 1921; Cal. Pol. C. Sec. 3335; re-en. Sec. 5143, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1977; R.C.M. 1947, 11-2003(part); amd. Sec. 1, Ch. 137, L. 1995; amd. Sec. 22, Ch. 499, L. 2007.**

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-33-2312. Organization of fire company. (1) A fire company organized pursuant to 7-33-2311 shall choose or elect a presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion, for each offense.

(2) A regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and must be affixed to exempt certificates, certificates of active membership, and other documents that the bylaws may provide. The secretary of a department having a seal shall take the constitutional oath of office and give a bond that the bylaws provide for the faithful performance of the secretary's duties.

History: **(1)En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; (2)En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2006(part); amd. Sec. 11, Ch. 263, L. 1979; amd. Sec. 37, Ch. 575, L. 1981; amd. Sec. 724, Ch. 61, L. 2007.**

Cross-References

Filing of oath of office, 7-4-101.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-2313. Repealed. Sec. 2, Ch. 167, L. 2007.

History: **En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R.C.M. 1921; re-en. Sec. 5147, R.C.M. 1935; amd. Sec. 6, Ch. 118, L. 1965; amd. Sec. 18, Ch. 157, L. 1977; R.C.M. 1947, 11-2007; amd. Sec. 4, Ch. 46, L. 1997; amd. Sec. 2, Ch. 429, L. 2003.**

7-33-2314. Military exemption for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to exemption from military duty except in case of war, invasion, or insurrection.

History: **En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2004(part); amd. Sec. 10, Ch. 379, L. 1983; amd. Sec. 34, Ch. 291, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 291 after "entitled to" deleted "the following privileges and exemptions: (1) exemption from payment of poll tax, road tax, and head tax of every description"; and made minor changes in style. Amendment effective October 1, 2009.

7-33-2315. Certificate of membership in fire company. (1) A firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department or company to which the firefighter belonged a certificate to that effect.

(2) (a) An active firefighter must have a certificate of that fact, signed by the chief of the fire department or the presiding officer of the company to which the firefighter belongs. The certificates must be countersigned by the secretary and over the seal of the company, if one is provided.

(b) If authorized by the bylaws of the company, in lieu of issuing certificates to exempt firefighters exempt certificates may be issued by the clerk and recorder of the county, over the clerk's official seal and signature, which entitles the holder to an exemption from military duty.

(3) Each certificate entitles the holder to an exemption from military duty. Each certificate is prima facie evidence of the facts stated in the certificate.

(4) The secretary of the fire department or company shall keep a record of each certificate of exemption or active membership, the date of the certificate and to whom issued, and, when a seal is not provided, similar entries of certificates issued to obtain certificates from the county clerk and recorder.

History: Ap. p. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; Ap. p. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R.C.M. 1921; re-en. Sec. 5145, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2005, R.C.M. 1947; Ap. p. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2005, 11-2006(part); amd. Sec. 11, Ch. 379, L. 1983; amd. Sec. 725, Ch. 61, L. 2007.

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-17-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: En. Sec. 1, Ch. 193, L. 1979.

Cross-References

City-county consolidation — option 1, Title 7, ch. 3, part 11.

City-county consolidation — option 2, Title 7, ch. 3, parts 12 and 13.

Part 24
Fire Service Areas

7-33-2401. Fire service area — establishment — alteration — dissolution. (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the procedures provided in subsection (2). The board of county commissioners shall alter the boundaries of a fire service area to exclude any area that is annexed by a city or town, using the procedures provided in subsection (2). Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area.

History: En. Sec. 1, Ch. 351, L. 1987; amd. Sec. 1, Ch. 345, L. 1991; amd. Sec. 1, Ch. 508, L. 2003; amd. Sec. 24, Ch. 499, L. 2007.

7-33-2402. Area services. (1) A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

(a) (i) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

(ii) fire protection by contracting for the services of a fire service agency; and

(b) emergency medical services and equipment, licensed by the department of public health and human services, and related personnel, facilities, and maintenance.

(2) A fire service area may, pursuant to 50-61-102, submit a fire code and a plan for enforcement to the department of justice in order to be certified for local enforcement. However, an appointed board of trustees of a fire service area shall obtain approval of the county commissioners prior to submitting a fire code and a plan of enforcement to the department of justice.

History: En. Sec. 2, Ch. 351, L. 1987; amd. Sec. 2, Ch. 345, L. 1991; amd. Sec. 1, Ch. 212, L. 1995; amd. Sec. 35, Ch. 418, L. 1995; amd. Sec. 33, Ch. 546, L. 1995.

7-33-2403. Operation of fire service area — voted levy for volunteer firefighters' disability income insurance. (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to govern and manage the affairs of the area; or

(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for election of rural fire district trustees in 7-33-2106.

(2) Subject to 15-10-425, the commissioners may levy a tax upon all property within the county for the purpose of buying disability income insurance coverage for volunteer firefighters deployed within the fire service area as provided in 7-6-621.

(3) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 apply and 7-33-2106 applies whether the trustees are elected or appointed, except that the trustees shall prepare annual budgets and request a schedule of rates for the budget.

History: En. Sec. 3, Ch. 351, L. 1987; amd. Sec. 2, Ch. 75, L. 1989; amd. Sec. 7, Ch. 254, L. 1999; amd. Sec. 4, Ch. 485, L. 2007.

7-33-2404. Financing of fire service area — fee on structures — fee on undeveloped land. (1) In the resolution creating the fire service area and by resolution as necessary after creation of the fire service area, the board of county commissioners shall establish a schedule of rates to be charged to owners of structures and owners of undeveloped land that are benefited by the services offered by the fire service area.

(2) (a) The rates for structures must be applied on a fair and equal basis to all classes of structures benefited by the fire service area. The fee charged to owners of structures is intended to be primarily used for structural fire prevention and suppression.

(b) The rates for undeveloped land must be applied on a fair and equal basis to all classes of undeveloped land benefited by the fire service area. Undeveloped land does not include land located under structures subject to a fee under subsection (2)(a). The excluded land may not exceed 1 acre. The fee charged to owners of undeveloped land is intended to be primarily used for wildland fire prevention and suppression. The fee may not exceed 15 cents an acre up to a maximum of $250 for undeveloped land under single ownership. The fee may not be assessed on undeveloped land for which the owner pays a fee or tax to another public agency for wildland fire prevention and suppression.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and undeveloped land and shall collect the assessments with the general taxes of the county. The assessments are a lien on the assessed property.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of the indebtedness may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the area, as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.

(5) If a fire service area is reduced or eliminated by annexation of all or a portion of the fire service area into a municipality, then the county commissioners or trustees of the fire service area shall notify the annexing municipality in order to prevent the property owners of the area to be annexed from assuming financial responsibility to both the municipality and the fire service area.

History: En. Sec. 4, Ch. 351, L. 1987; amd. Sec. 3, Ch. 75, L. 1989; amd. Sec. 3, Ch. 345, L. 1991; amd. Sec. 15, Ch. 459, L. 1997; amd. Sec. 25, Ch. 29, L. 2001; amd. Sec. 2, Ch. 508, L. 2003; amd. Sec. 1, Ch. 467, L. 2007.

7-33-2405. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against disasters, incidents, or emergencies.

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

(a) other fire service areas;
(b) unincorporated municipalities;
(c) incorporated municipalities;
(d) state agencies;
(e) private fire prevention agencies;
(f) federal agencies;
(g) fire districts;
(h) governing bodies of other political subdivisions in Montana; and
(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the governing body of a fire service area has not concluded a mutual aid agreement, the governing body, a representative of the governing body, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", and "emergencies" have the meanings provided in 10-3-103.

History: En. Sec. 1, Ch. 149, L. 1993; amd. Sec. 5, Ch. 46, L. 1997; amd. Sec. 3, Ch. 292, L. 2007.

Parts 25 through 40 reserved

Part 41
Municipal Fire Departments

Part Cross-References

Municipal powers, 7-1-4124.
Fire department, 7-3-4466.

7-33-4101. Fire department authorized and required. In every city and town of this state there must be a fire department, which must be organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part); amd. Sec. 1, Ch. 96, L. 1997.

7-33-4102. Applicability of part. (1) The provisions of this part govern and control fire departments in every city or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) Whenever the provisions of this part conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government prevail.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part); amd. Sec. 12, Ch. 263, L. 1979.

7-33-4103. Composition of fire department. Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire department and such number of firefighters as the council or commission may from time to time provide and may also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Deputy officers in general, Title 7, ch. 4, part 24.

7-33-4104. Duties of chief and assistant chief of fire department. (1) The chief of the fire department has sole command and control over all persons connected with the fire department of the city or town and has full power and authority over its organization, government, and discipline. The chief may establish disciplinary rules that the chief considers advisable, subject to the approval of the city or town council. The chief has charge of and is responsible for the engines and other apparatus and the property of the town or city furnished to the fire department and shall see that they are at all times ready for use in the extinguishing of fires.

(2) The assistant chief of the fire department shall aid the chief in the work of the department and in the chief's absence shall perform the chief's duties.

History: En. Sec. 6, p. 75, L. 1899; re-en. Sec. 3331, Rev. C. 1907; re-en. Sec. 5114, R.C.M. 1921; re-en. Sec. 5114, R.C.M. 1935; R.C.M. 1947, 11-1906; amd. Sec. 726, Ch. 61, L. 2007.

Cross-References

General powers of Municipal Council, 7-5-4101.

7-33-4105. Appointment of chief engineer of fire department. (1) The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department:

(a) to manage and control the fire engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires;

(b) to superintend and direct all fire companies; and

(c) to examine and inspect all buildings, chimneys, flues, and boilers and other things within the city or town and require the same to be put in a safe condition or removed if liable to cause fire.

(2) In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907; re-en. Sec. 5140, R.C.M. 1921, re-en. Sec. 5140, R.C.M. 1935; R.C.M. 1947, 11-1940.

Cross-References

Compensation and duties of city employees, 7-5-4110.

7-33-4106. Appointment of firefighters. The mayor or manager shall nominate and, with the consent of the council or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.
Powers and duties of Mayor related to administration and executive function, 7-5-4102.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-33-4107. Qualifications of firefighters. The state of Montana determines that age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands of the firefighting profession and the expectation of many years of emergency service. The qualifications of firefighters shall be that they:

(1) shall not be more than 34 years of age at the time of original appointment;

(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and

(3) at the option of said city or town, shall be qualified voters of the city or town.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part); amd. Sec. 1, Ch. 82, L. 1981.

7-33-4108. Physical examination. The examination required by 7-33-4107(2) shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firefighters in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part).

Cross-References

Office of Municipal Clerk, Title 7, ch. 4, part 45.

7-33-4109. Supplementary volunteer fire department authorized for cities of second class — voted levy for volunteer firefighters' disability income insurance. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department is exempted from compliance with 7-33-4128 to the extent that section applies to the volunteer fire department by way of penalties and infringements.

(3) A volunteer is an enrolled member of the volunteer fire department, assists the paid fire department, and is eligible to serve only on the board of trustees of the fire department relief association of the city. However, not more than three volunteer members may be on the board of trustees. A person who is a volunteer for the purposes of this section is not entitled to receive a service pension.

(4) The governing body of the city may:

(a) pay an enrolled volunteer firefighter a minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper place;

(b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying disability income insurance coverage for the volunteer firefighters of the volunteer fire department as provided in 7-6-621.

(5) In attending fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department.

History: (1) thru (4)En. Sec. 3, Ch. 136, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1936, R.C.M. 1947; (5)En. Sec. 4, Ch. 136, L. 1939; Sec. 11-1937, R.C.M. 1947; R.C.M. 1947, 11-1936, 11-1937; amd. Sec. 4, Ch. 375, L. 1983; amd. Sec. 5, Ch. 485, L. 2007.

Cross-References

Classification of municipalities, 7-1-4111.

General powers of Municipal Council, 7-5-4101.

7-33-4110. Volunteer companies not affected. Nothing contained in 7-33-4101 through 7-33-4104, 7-33-4106 through 7-33-4108, 7-33-4112, 7-33-4113, 7-33-4122 through 7-33-4125, and 7-33-4127 shall be held or construed to affect any fire organization known as a volunteer fire company.

History: En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907; re-en. Sec. 5116, R.C.M. 1921; re-en. Sec. 5116, R.C.M. 1935; R.C.M. 1947, 11-1908(part).

Cross-References

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-4111. Tax levy for volunteer fire departments — voted levy for volunteer firefighters' disability income insurance. (1) For the purpose of supporting volunteer fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to other levies permitted by law, a tax on the taxable value of all taxable property in the city or town.

(2) Subject to 15-10-425, a city or town may levy a tax on the taxable value of all taxable property in the city or town for the purpose of purchasing disability income insurance coverage for volunteer firefighters of volunteer fire departments as provided in 7-6-621.

History: En. Sec. 1, Ch. 26, L. 1927; re-en. Sec. 5116.1, R.C.M. 1935; amd. Sec. 26, Ch. 566, L. 1977; R.C.M. 1947, 11-1909; amd. Sec. 1, Ch. 546, L. 1983; amd. Sec. 72, Ch. 584, L. 1999; amd. Sec. 80, Ch. 574, L. 2001; amd. Sec. 6, Ch. 485, L. 2007.

Cross-References

Authority to levy special taxes and assessments, 7-6-4406.

7-33-4112. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against disasters, incidents, or emergencies.

(2) Councils or commissions of incorporated municipalities may enter mutual aid agreements with the proper authority of:

(a) other incorporated municipalities;

(b) fire districts;

(c) unincorporated municipalities;

(d) state agencies;

(e) private fire prevention agencies;

(f) federal agencies;

(g) fire service areas;

(h) the governing body of other political subdivisions; or

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the council or commission has not concluded a mutual aid agreement, the council or commission, a representative of the council or commission, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, the terms "disasters", "emergencies", or "incidents" have the meanings provided in 10-3-103.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(b); amd. Sec. 3, Ch. 149, L. 1993; amd. Sec. 6, Ch. 46, L. 1997; amd. Sec. 4, Ch. 292, L. 2007.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-33-4113. Personnel of fire department not considered municipal officers. The chief of the fire department, the assistant chief or chiefs of the fire department, and the firefighters shall not be deemed officers of the municipal corporation in which such fire department is established.

History: **En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).**

Cross-References

Municipal officers in general, Title 7, ch. 4, part 41.

7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports. No person, corporation, partnership, or association which is authorized by any city, town, village, or district fire department or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit such report to such fire department or volunteer fire company shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure to report such fire unless such delay or failure is the result of the gross negligence of such person, corporation, partnership, or association.

History: **En. Sec. 1, Ch. 42, L. 1955; R.C.M. 1947, 11-1941.**

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

7-33-4115 through 7-33-4120 reserved.

7-33-4121. Rules governing employment in fire departments. The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules governing the employment of the members or employees of their respective fire departments.

History: **En. Sec. 2, Ch. 91, L. 1917; re-en. Sec. 5139, R.C.M. 1921; re-en. Sec. 5139, R.C.M. 1935; R.C.M. 1947, 11-1939.**

Cross-References

Classification of municipalities, 7-1-4111.
Compensation and duties of city employees, 7-5-4110.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

7-33-4122. Term of appointment of firefighters — probationary period. Each appointment shall be first made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the council or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

History: **En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).**

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-33-4123. Authority to suspend firefighters. (1) The mayor or manager may suspend the chief and assistant or any firefighter of the fire department for neglect of duty or a violation of any of the rules of the fire department.

(2) The chief of the fire department may suspend the assistant chief of the fire department or any firefighter for like cause.

(3) The assistant chief of the fire department may suspend any firefighter for a like cause.

History: **En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).**

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-33-4124. Suspension procedure. (1) In any case in which a member of the municipal fire department is suspended from duty, the person suspended must be furnished with a copy of the charge, in writing, setting forth the reasons for the suspension. Subject to subsection (2), the suspended member of the fire department may request in writing that the charges be presented to the council or commission for a hearing. The hearing must be held within 30 days of the request. The suspended member may invoke the right of privacy to request a closed hearing. At the hearing, the suspended member of the fire department may appear in person or by counsel and provide a defense against the charges.

(2) If the suspended member of the fire department does not request a hearing by the council or commission within 5 business days of receiving the suspension charge, the suspended member forfeits the option of requesting a hearing by the council or commission.

(3) If the charges are not presented before the council or commission within 30 days of the request for a hearing or if the council or commission determines the charges to be unfounded, the suspended person must be reinstated and is entitled to the person's usual compensation for the time of the suspension.

(4) If the charges are proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose a penalty commensurate to its determination of what the offense warrants, including either the continuation of the suspension for a limited time or the removal of the suspended person from the fire department.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part); amd. Sec. 727, Ch. 61, L. 2007; amd. Sec. 1, Ch. 281, L. 2007.

7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority. (1) If the council at any time reduces the number of firefighters in the fire department, those most recently appointed must be selected for retirement from the fire department. The city or town clerk shall keep a list of the retired firefighters.

(2) If the number of firefighters is again increased by the council, the individuals on the list must be called into service, with the longest serving firefighters being first selected for service in the fire department.

History: En. Sec. 4, p. 74, L. 1899; re-en. Sec. 3329, Rev. C. 1907; re-en. Sec. 5112, R.C.M. 1921; re-en. Sec. 5112, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1904; amd. Sec. 728, Ch. 61, L. 2007.

Cross-References

Duties of City Clerk related to records, 7-4-4502.

Duties of Town Clerk related to records, 7-4-4512.

7-33-4126. Repealed. Sec. 5, Ch. 375, L. 1983.

History: Ap. p. Sec. 1, Ch. 15, L. 1937; Sec. 11-1931, R.C.M. 1947; Ap. p. Sec. 1, Ch. 136, L. 1939; Sec. 11-1934, R.C.M. 1947; R.C.M. 1947, 11-1931, 11-1934.

7-33-4127. Compensation of fire department personnel. The compensation of the chief of the fire department and assistant chiefs of the fire department and firefighters in cities and towns where the council or commission shall establish a paid fire department and the city electrician and assistant city electricians shall be fixed by ordinance.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Compensation and duties of city employees, 7-5-4110.

7-33-4128. Minimum wages of firefighters in cities of first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire departments of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least $750 per month for the first year of service and thereafter at least $750 per month plus 1% of said minimum base monthly salary for each additional year of service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973; amd. Sec. 1, Ch. 324, L. 1975; Sec. 11-1932, R.C.M. 1947; redes. 41-2303.1 by Sec. 1, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.1(part).

Cross-References

Classification of municipalities, 7-1-4111.

Compensation and duties of city employees, 7-5-4110.

Minimum wage, 39-3-404.

7-33-4129. Repealed. Sec. 5, Ch. 375, L. 1983.

History: En. 41-2303.2 by Sec. 2, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.2.

7-33-4130. Group insurance for firefighters — funding. (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

(b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Subject to 15-10-420, those incorporated cities and towns that require additional funds to finance the provisions of this section may levy, by the amount required to meet these provisions, a tax on the taxable value of all taxable property in the respective city or town. This levy must be collected in the same manner and at the same time as other taxes are levied.

History: En. 11-1024.1, 11-1024.2 by Secs. 1, 2, Ch. 39, L. 1975; R.C.M. 1947, 11-1024.1, 11-1024.2; amd. Sec. 2, Ch. 88, L. 1981; amd. Sec. 73, Ch. 584, L. 1999; amd. Sec. 81, Ch. 574, L. 2001.

Cross-References

Classification of municipalities, 7-1-4111.

Authority to levy special taxes and assessments, 7-6-4406.

7-33-4131. Firefighter's rights in event of city-county consolidation. A firefighter employed by a fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under part 11 or parts 12 and 13 of chapter 3 or other acts of consolidation or disincorporation has the same job tenure rights as though no election and qualification had taken place.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(1).

7-33-4132. Repealed. Sec. 5, Ch. 375, L. 1983.

History: En. Sec. 3, Ch. 15, L. 1937; R.C.M. 1947, 11-1933.

7-33-4133. Payment of partial salary to firefighter injured in performance of duty. (1) A member of a fire department of a first-class or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

History: En. Sec. 1, Ch. 396, L. 1991; amd. Sec. 729, Ch. 61, L. 2007.

Part 42
Powers of Municipal Council Related to Fire Services

Part Cross-References

General powers of Municipal Council, 7-5-4101.

7-33-4201. Establishment of fire department and fire alarm system. The city or town council has power to establish a fire department and prescribe and regulate its duties and to maintain a fire alarm.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

7-33-4202. Provision for fire equipment. The city or town council has power to erect engine, hose, and hook-and-ladder houses and to provide engines and other implements for the extinguishment of fire.

History: En. Subd. 28, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.27, R.C.M. 1935; R.C.M. 1947, 11-930.

Cross-References

Construction, lease, and management of municipal buildings, 7-8-4101.

7-33-4203. Repealed. Sec. 156, Ch. 370, L. 1987.

History: **En. Subd. 26, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.25, R.C.M. 1935; R.C.M. 1947, 11-928.**

7-33-4204. Inspection and regulation of fire hazards. The city or town council has power to inspect chimneys, flues, fireplaces, stovepipes, ruins, structures, and boilers and, when dangerous, to require the same to be removed or put in order and prohibit the use thereof until safe.

History: **En. Subd. 29, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.28, R.C.M. 1935; R.C.M. 1947, 11-931.**

Cross-References

Fire safety in public buildings, Title 50, ch. 61.

Removal of fire hazards, Title 50, ch. 62, part 1.

7-33-4205. Regulation of explosives and inflammable materials. Except as provided in 50-61-120, the city or town council has power to regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine and to prohibit the storage of the same within 3 miles of the city limits.

History: **En. Subd. 30, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.29, R.C.M. 1935; R.C.M. 1947, 11-932; amd. Sec. 3, Ch. 506, L. 1989.**

Cross-References

Licensing of persons using explosives in demolition or construction of buildings, Title 37, ch. 72.

Removal of fire hazards, Title 50, ch. 62, part 1.

7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents. The city or town council has power to regulate or prohibit the building of bonfires or the explosion, use, or selling of fireworks, firecrackers, torpedoes, other pyrotechnics, or toy pistols or guns within the city or town.

History: **En. Subd. 31, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.30, R.C.M. 1935; R.C.M. 1947, 11-933.**

7-33-4207. Regulation of industries with fire-causing potential. The city or town council has power to regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires.

History: **En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).**

Cross-References

Regulation of location of businesses, factories, and steam boilers, 7-21-4204.

7-33-4208. Adoption of fire code. The governing body of an incorporated city or town may adopt technical fire codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: **En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).**

Cross-References

Fire safety in public buildings, Title 50, ch. 61.

Parts 43 and 44 reserved

Part 45

Provisions Applicable to All Local Governmental Fire Agencies

7-33-4501. Legal representation for firewarden, firefighter, or employee — local governmental fire agency. A local governmental fire agency shall pay reasonable attorney fees and costs for outside legal counsel to defend a firewarden, firefighter, or paid or volunteer employee of a local governmental fire agency against a criminal prosecution arising from an act or omission in the performance of duties on a fire or in fire training that is made in good faith and within the course and scope of employment of the firewarden, firefighter, or paid or volunteer employee. The local governmental fire agency may determine whether the act or omission of the firewarden, firefighter, or paid or volunteer employee was in good faith and arising from the performance of the employee's duties in a fire or in fire training. The requirement to pay attorney fees and costs does not apply to any postconviction legal proceedings.

History: **En. Sec. 3, Ch. 464, L. 2007.**

CHAPTER 34
MEDICAL SERVICES AND BOARDING HOMES FOR THE AGED

Part 1 — Ambulance Services

7-34-101. Ambulance services authorized.
7-34-102. Ambulance service mill levy permitted.
7-34-103. Manner of providing ambulance service.
7-34-104. Certain ambulance services unaffected.

Parts 2 through 20 reserved

Part 21 — Hospital Districts

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7-34-2102. Definitions.
7-34-2103. Petition required to create hospital district.
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7-34-2105. Petition to be filed with county clerk and recorder — clerk's certificate.
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7-34-2121. Vacancies.
7-34-2122. Powers of district.
7-34-2123. Admission to district hospital facilities.
7-34-2124 through 7-34-2130 reserved.
7-34-2131. Hospital district bonds and notes authorized.
7-34-2132. Hospital district budget.
7-34-2133. Levy of district taxes.
7-34-2134. Repealed.
7-34-2135. Repealed.
7-34-2136. Repealed.
7-34-2137. Collection of taxes and disposition of funds.
7-34-2138. Hospital district capital replacement fund.
7-34-2139 through 7-34-2150 reserved.
7-34-2151. Annexation of land to hospital district.
7-34-2152. Petition to annex land.
7-34-2153. Hearing on petition for annexation — notice.
7-34-2154. Decision on annexation petition.
7-34-2155. Effect of annexation.
7-34-2156. Withdrawal of land from hospital district.
7-34-2157. Hearing on petition for withdrawal — notice.
7-34-2158. Decision on withdrawal petition — appeal.
7-34-2159. Effective date of withdrawal.
7-34-2160. Withdrawing property subject to existing indebtedness.
7-34-2161. Dissolution of hospital district.
7-34-2162. Hearing on petition for dissolution — notice.
7-34-2163. Decision on dissolution petition.
7-34-2164. Effect of dissolution.

Part 22 — County Hospital Services

7-34-2201. Erection and management of county health care facilities — definition — provision of health care services.

7-34-2202. Health care facilities commission.
7-34-2203. Provision of health care services.
7-34-2204. Use of county property and funds for health care purposes.

Part 23 — County Boarding Homes for the Aged

7-34-2301. Construction and operation of county boarding home authorized.
7-34-2302. Repealed.
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Chapter Cross-References

Hospitals and related facilities, Title 50, ch. 5.

Part 1
Ambulance Services

Part Cross-References

Ambulance service licensing, Title 50, ch. 6, part 3.

7-34-101. Ambulance services authorized. A county, city, or town, acting through its governing body, may establish and maintain an ambulance service for such county, city, or town. Any county, city, or town may contract with any county, city, or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, with the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by 15% of the electors registered to vote in the county, city, or town at the last preceding general election or in each of the counties, cities, or towns wherein a joint ambulance service is being established.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-34-102. Ambulance service mill levy permitted. Subject to 15-10-420 and in addition to all other levies authorized by law, each county, city, or town may levy an annual tax on the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part); amd. Sec. 1, Ch. 668, L. 1991; amd. Sec. 74, Ch. 584, L. 1999; amd. Sec. 24, Ch. 495, L. 2001; amd. Sec. 82, Ch. 574, L. 2001.

Cross-References

Authority to levy special taxes and assessments, 7-6-4406.

7-34-103. Manner of providing ambulance service. (1) If a county, city, or town establishes or maintains ambulance service it may, acting through its governing board:

(a) operate the ambulance service itself or contract for ambulance service;

(b) buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(c) sell ambulance service insurance or contract with a third-party entity to sell ambulance service insurance to persons who use the ambulance service that covers the cost of the ambulance service that is not otherwise covered;

(d) adopt rules and establish fees or charges for the furnishing of an ambulance service.

(2) A county, city, or town that directly sells ambulance service insurance or that remains liable for the financial risk pursuant to insurance sold by a third party under contract with the county, city, or town is exempt from Title 33, except for the provisions provided in 33-18-201 and 33-18-242.

History: En. Sec. 2, Ch. 238, L. 1961; R.C.M. 1947, 69-3602; amd. Sec. 1, Ch. 13, L. 2001.

Cross-References

Municipal contracts and franchises, Title 7, ch. 5, part 43.

Cooperative agreements — ambulance services, 50-6-304.

7-34-104. Certain ambulance services unaffected. The provisions of this part shall in no way affect county, city, or town ambulance service in operation on March 14, 1961.

History: En. Sec. 3, Ch. 238, L. 1961; R.C.M. 1947, 69-3603.

Parts 2 through 20 reserved

Part 21
Hospital Districts

Part Cross-References

County tax levy for health care facilities, 7-6-2512.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Hospitals and related facilities, Title 50, ch. 5.

7-34-2101. Purpose of part. The purpose of this part is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services and health care facilities and services to residents of districts and, as herein authorized, to others.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part); amd. Sec. 1, Ch. 453, L. 1991.

7-34-2102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Hospital facilities" means a hospital or a hospital-related facility, including outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities, all as defined in 50-5-101. The term includes public health centers.

(2) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

History: En. Sec. 1, Ch. 336, L. 1973; R.C.M. 1947, 16-4301.1; amd. Sec. 2, Ch. 453, L. 1991; amd. Sec. 1, Ch. 93, L. 1997; amd. Sec. 1, Ch. 98, L. 1999.

Cross-References

Hospital defined, 50-5-101.

7-34-2103. Petition required to create hospital district. Proceedings for creation of a hospital district shall be initiated by a petition signed by not less than 30% of the qualified electors of the proposed hospital district who are taxpayers upon property within the proposed hospital district and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

Cross-References

Division of county into districts, 7-5-2103.

Ballot issues — who may petition, 13-27-102.

7-34-2104. Details relating to petition. (1) The petition may consist of one sheet or several sheets, identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk and recorder. The petition must give the post-office address and voting precinct of each petitioner.

(2) Only persons who are qualified to sign the petitions are qualified to circulate the petitions, and there must be attached to the complete petition the affidavit of a person who circulated or assisted in circulating the petition that the person believes the signatures on the petition are genuine and the signers knew the contents of the petition before signing it.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part); amd. Sec. 730, Ch. 61, L. 2007.

7-34-2105. Petition to be filed with county clerk and recorder — clerk's certificate. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, must be filed with the county clerk and recorder, who shall, within 15 days, carefully examine the petition and the county records showing the qualifications of the petitioners and attach it to a certificate under the clerk and recorder's official signature and the seal of office. The certificate must set forth:

(1) the total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last-completed assessment roll for state and county taxes;

(2) which and how many of the persons whose names are subscribed to the petition are possessed of all of the qualifications required of signers to the petition; and

(3) whether the qualified signers constitute more or less than 30% of the registered electors of the proposed hospital district who are taxpayers upon property in the proposed district and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part); amd. Sec. 731, Ch. 61, L. 2007.

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-34-2106. Presentation of petition to board of county commissioners — hearing required. (1) The county clerk and recorder shall present the petition and the clerk's certificate to the board of county commissioners at its first meeting held after the clerk has attached the certificate.

(2) The board shall carefully examine the petition, and if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of the hospital district.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part); amd. Sec. 732, Ch. 61, L. 2007.

7-34-2107. Notice of hearing. A notice of the hearing required by 7-34-2106 shall be published as provided in 7-1-2121.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part); amd. Sec. 34, Ch. 349, L. 1985.

7-34-2108. Hearing on petition. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts or hearing petitioners or objectors without additional published or posted notice, but no adjournment shall exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969; R.C.M. 1947, 16-4303.

7-34-2109. Election on question of creating hospital district. The board of county commissioners, upon completion of the hearing provided for in 7-34-2106 through 7-34-2108, shall proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition.

History: En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part).

Cross-References

Resolution requirements, 7-5-121.

7-34-2110. Resolution calling for election. (1) The board of county commissioners in its resolution may make changes in the boundaries of the proposed district that it considers advisable, without including any additional lands not described in the petition, and it shall call an election upon the question of the creation of the district.

(2) The board shall designate in its resolution whether a special election is to be held or whether the matter is to be determined at the next general election. If a special election is ordered, the board shall specify in its order the date for the election. The special election must be held in conjunction with a regular or primary election.

History: En. Secs. 4, 5, Ch. 155, L. 1953; amd. Secs. 4, 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part), 16-4305(part); amd. Sec. 345, Ch. 571, L. 1979; amd. Sec. 62, Ch. 387, L. 1995.

Cross-References

Resolution requirements, 7-5-121.

7-34-2111. Territory of hospital district. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part).

7-34-2112. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots must contain the words "Hospital district — Yes" and "Hospital district — No".

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 346, Ch. 571, L. 1979.

Cross-References

Elections, Title 13.

7-34-2113. Who may vote. Only qualified electors residing within the proposed hospital district may vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 2, Ch. 213, L. 1979.

Cross-References

Qualifications of voter, 13-1-111.

7-34-2114. Procedure upon favorable vote. (1) In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within 10 days after the election, certify such result by resolution and proceed with the organization of such district as specified in this part.

(2) After 20 days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953; amd. Sec. 6, Ch. 257, L. 1969; R.C.M. 1947, 16-4306.

7-34-2115. District to be governed by elected trustees — legal assistance. (1) A hospital district must be governed and managed by a board of three or five trustees, elected by the registered electors residing in the district. The number of trustees on the board and, if the number is set at five, the initial terms of two trustees must be fixed by the bylaws of the district.

(2) The trustees must be elected from among the registered electors qualified to vote at general elections within the district.

(3) The trustees may call upon the county attorney for legal advice and services as they may require.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 2, Ch. 7, L. 1991.

Cross-References

Qualifications of voter, 13-1-111.

7-34-2116. Election of first board of trustees. (1) The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district if created.

(2) The trustees may be nominated and have their names appear upon the ballots as provided in 7-34-2117.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 347, Ch. 571, L. 1979; amd. Sec. 2, Ch. 27, L. 1981.

7-34-2117. Procedure for conduct of election for trustees — appointment of trustees. (1) All elections of trustees following the election of the first board of trustees must be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(3) If there is no nomination petition filed, it is not necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term. If there is only one nominee for a ballot position, it is not necessary to hold an election for that position and the board of county commissioners shall declare elected by acclamation the candidate who filed a nominating petition for the position.

(4) A member of the board taking office pursuant to subsection (3) serves a term of office as if elected to that office.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 348, Ch. 571, L. 1979; amd. Sec. 3, Ch. 27, L. 1981; amd. Sec. 24, Ch. 250, L. 1985; amd. Sec. 8, Ch. 254, L. 1999.

7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first district meeting following their election and until their respective successors are elected and qualified.

(2) Annually after the initial election there may be elected a trustee to serve for a term of 3 years and until a successor is qualified. The term of 3 years commences at the first district meeting following the trustee's election.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 391, Ch. 571, L. 1979; amd. Sec. 4, Ch. 27, L. 1981; amd. Sec. 733, Ch. 61, L. 2007.

Cross-References

County officers — term of office, 7-4-2205.

7-34-2119. Organization of board of trustees. The trustees at their first meeting shall adopt bylaws for the government and management of the district and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2120. Compensation of trustees. The trustees shall serve without pay.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2121. Vacancies. A vacancy upon the board of trustees occurring during the term of office of a trustee or in the office of clerk must be filled by appointment by the remaining members, and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 9, Ch. 254, L. 1999.

7-34-2122. Powers of district. A hospital district has all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of hospital facilities that its board of trustees considers necessary and expedient. In addition to the general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by fees that may be agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, furnish, and maintain necessary buildings and grounds;

(5) adopt, by resolution, rules for the operation and administration of hospital facilities under its control and for the admission of persons to the facilities;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) subject to 15-10-420, levy taxes as prescribed in this part;

(8) borrow money by the issuance of its bonds as prescribed in this part;

(9) borrow money by the issuance of notes;

(10) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(11) sell or lease any of its facilities or equipment as may be considered expedient;

(12) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants; and

(13) provide educational benefits to qualified individuals, including the payment of tuition, room and board, educational materials, and stipends and the repayment of student loans in return for an agreement by those persons to provide services to the district.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part); amd. Sec. 2, Ch. 349, L. 1991; amd. Sec. 3, Ch. 453, L. 1991; amd. Sec. 75, Ch. 584, L. 1999.

Cross-References

Records and reports required of health care facilities — confidentiality, 50-5-106.

7-34-2123. Admission to district hospital facilities. Such a hospital district must admit persons to its facilities without regard to race, color, or sex. Such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services, and supplies. Indigents needing such services, for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals on terms and rates prescribed or authorized by law.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

Cross-References

Hospitals — discrimination prohibited, 50-5-105.

7-34-2124 through 7-34-2130 reserved.

7-34-2131. Hospital district bonds and notes authorized. (1) (a) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(b) The amount of bonds issued for the purposes referred to in subsection (1)(a) and outstanding at any time may not exceed 1.4% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(c) The bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years.

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

(3) This section may not be construed to amend or repeal the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part); amd. Sec. 58, Ch. 614, L. 1981; amd. Sec. 28, Ch. 370, L. 1987; amd. Sec. 3, Ch. 349, L. 1991; amd. Sec. 26, Ch. 29, L. 2001; amd. Sec. 83, Ch. 574, L. 2001.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

7-34-2132. Hospital district budget. The board of hospital trustees shall annually present their budget to the board of county commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).

7-34-2133. Levy of district taxes. Subject to 15-10-420, the board of county commissioners shall, annually at the time of levying county taxes, fix and levy a tax on the taxable value of all taxable property within the hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part); amd. Sec. 76, Ch. 584, L. 1999; amd. Sec. 84, Ch. 574, L. 2001.

7-34-2134. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(1); amd. Sec. 1, Ch. 554, L. 1979; amd. Sec. 2, Ch. 625, L. 1983.

7-34-2135. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. 16-4309.1, 16-4309.2 by Secs. 1, 2, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(2), 16-4309.2; amd. Sec. 2, Ch. 554, L. 1979; amd. Sec. 1, Ch. 608, L. 1985.

7-34-2136. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(3), (4).

7-34-2137. Collection of taxes and disposition of funds. (1) The procedures for the collection of the tax shall be in accordance with the existing laws of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer, who shall be, ex officio, the treasurer for the hospital district, and such treasurer shall keep a detailed account of all tax money paid into the fund, of all other money from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969; R.C.M. 1947, 16-4310.

7-34-2138. Hospital district capital replacement fund. (1) A hospital district may establish a capital replacement fund. The fund may be used only for the replacement of property, plant facilities, or equipment. The cost of such capital equipment must exceed $5,000 and have a life expectancy of 5 years or more.

(2) A capital replacement fund established under subsection (1) may not exceed 10% of the total value of the hospital's property, plant facilities, and equipment at the end of a fiscal year.

History: En. Sec. 1, Ch. 64, L. 1987.

7-34-2139 through 7-34-2150 reserved.

7-34-2151. Annexation of land to hospital district. The boundaries of any such public hospital district may be altered and outlying districts may be annexed from territory contiguous thereto in the following manner.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

Cross-References

Special improvement districts — extension of proposed district, 7-12-4109.

7-34-2152. Petition to annex land. A petition signed by 10% or more of the freeholders within the territory proposed to be annexed or by a majority of such freeholders if there are less than 25 residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2153. Hearing on petition for annexation — notice. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published as provided in 7-1-2121 prior to the date fixed by said board for the hearing of said petition, which date shall be not less than 4 weeks after the filing of such petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part); amd. Sec. 35, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-34-2154. Decision on annexation petition. Said board of county commissioners shall have the power, by order entered on its minutes:

(1) to grant said petition either in whole or in part;

(2) to alter the boundaries of said public hospital district; and

(3) to annex thereto all or such portion of said area or territory described in said petition as will be benefited thereby.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

7-34-2155. Effect of annexation. The annexed territory shall become and be a part of such public hospital district on the date fixed in the order of annexation and shall be subject to the taxes authorized by this part, including taxes for any preexisting indebtedness, together with the preexisting area of said district; and such taxes shall be uniform for the whole area and territory in the district as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2156. Withdrawal of land from hospital district. (1) Any portion of a public hospital district may be withdrawn therefrom, as provided in 7-34-2156 through 7-34-2160, upon receipt of a petition signed by 51% or more of the taxpayers residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district.

(2) No petition for withdrawal shall be entertained or acted upon by the board unless the same is filed before December 31 of the preceding year.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2157. Hearing on petition for withdrawal — notice. (1) The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition, which time shall not be more than 4 weeks after the receipt thereof.

(2) Any interested person may appear at said hearing and present objections to the withdrawal of said portion from said district.

(3) The board shall publish a notice of such hearing as provided in 7-1-2121.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part); amd. Sec. 36, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-34-2158. Decision on withdrawal petition — appeal. (1) The board shall consider the petition and all objections thereto, pass upon the merits thereof, and make its order in accordance therewith.

(2) Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2159. Effective date of withdrawal. Any withdrawal shall be effective as of January 1 following the issuance of the withdrawal order.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2160. Withdrawing property subject to existing indebtedness. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2161. Dissolution of hospital district. At any time after 5 years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the owners of property lying within such district as shown by the last-completed assessment roll.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

7-34-2162. Hearing on petition for dissolution — notice. Upon the filing of the petition, the board of county commissioners shall set a time for hearing the petition and shall publish a notice of the hearing as provided in 7-1-2121.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part); amd. Sec. 37, Ch. 349, L. 1985; amd. Sec. 66, Ch. 354, L. 2001.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-34-2163. Decision on dissolution petition. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-34-2162, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

7-34-2164. Effect of dissolution. The order of dissolution shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing said order of dissolution, provided that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

Cross-References

Role and duties of County Clerk, 7-4-2611.

Part 22
County Hospital Services

Part Cross-References

Hospitals and related facilities, Title 50, ch. 5.

7-34-2201. Erection and management of county health care facilities — definition — provision of health care services. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21 and 23 through 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, a critical access hospital, a hospice, an end-stage renal dialysis facility, an outpatient center for surgical services, an outpatient center for primary care, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as defined in 7-34-2102, or any combination and related medical facilities, including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 4, Ch. 520, L. 1995; amd. Sec. 41, Ch. 42, L. 1997; amd. Sec. 2, Ch. 93, L. 1997; amd. Sec. 2, Ch. 98, L. 1999; amd. Sec. 1, Ch. 192, L. 2001.

Cross-References

Hospitals — construction, expansion, or alteration, Title 50, ch. 5, part 3.

7-34-2202. Health care facilities commission. The board of county commissioners may create a commission for the management of health care facilities, as provided in 7-8-2103.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 5, Ch. 520, L. 1995.

7-34-2203. Provision of health care services. A county health care facility may be used to provide health care services.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 6, Ch. 520, L. 1995.

Cross-References

Discrimination prohibited, 50-5-105.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

7-34-2204. Use of county property and funds for health care purposes. (1) The board of county commissioners may, under the limitations and restrictions prescribed by law, lease county buildings, equipment, furniture, and fixtures for health care facility purposes, with full power of lessor except as limited in this section, upon the terms and conditions that the board may decide upon. The rentals received under the lease or leases must be paid into the general fund of the county.

(2) (a) A lease may not be made for a period longer than 5 years except in a case in which bonds are to be or have been issued in accordance with 7-34-2411, in which case the lease may extend until the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

(b) The board may not enter into a lease without first having advertised in a newspaper published in the county at least once a week for 5 weeks that the health care facility or designated portion of a health care facility, including equipment if applicable, is for lease for health care purposes.

(3) Money in the county general fund may be transferred to a state agency to be used as matching funds for the receipt of federal money for health care purposes.

History: En. Subd. 30, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.29, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1977; R.C.M. 1947, 16-1032; amd. Sec. 7, Ch. 520, L. 1995; amd. Sec. 4, Ch. 571, L. 2001; amd. Sec. 85, Ch. 574, L. 2001.

Cross-References

Authorization to lease county property, 7-8-2231.

Part 23
County Boarding Homes for the Aged

Part Cross-References

Board of Nursing Home Administrators, 2-15-1735.

Nursing home administrators, Title 37, ch. 9.

Montana Older Americans Act, Title 52, ch. 3, part 5.

Community-based nursing homes — Montana Mental Health Nursing Care Center, Title 53, ch. 21, part 4.

7-34-2301. Construction and operation of county boarding home authorized. The board of county commissioners may erect, furnish, equip, expand, improve, maintain, and operate a boarding home for the aged that does not constitute a health care facility, subject to any applicable standards established by the department of public health and human services. A boarding home may be located adjacent to or in a building containing a health care facility and may be operated in conjunction with the health care facility.

History: En. Sec. 1, Ch. 88, L. 1963; amd. Sec. 106, Ch. 349, L. 1974; R.C.M. 1947, 16-1037; amd. Sec. 36, Ch. 418, L. 1995; amd. Sec. 8, Ch. 520, L. 1995; amd. Sec. 34, Ch. 546, L. 1995.

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

7-34-2302. Repealed. Sec. 20, Ch. 520, L. 1995.

History: En. Sec. 2, Ch. 88, L. 1963; R.C.M. 1947, 16-1038.

7-34-2303. Lease of county property for boarding home. (1) The board of county commissioners may lease county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home for aged persons, with the full power of a lessor except as limited in this part, upon terms and conditions that the board may decide upon.

(2) The rentals received under the lease or leases must be paid into the general fund of the county, or if bonds have been issued under 7-34-2411 to finance or refinance the costs of a boarding home, the rentals must be applied, as necessary, to the payment of the principal of or interest on the bonds.

(3) (a) Except as provided in subsection (3)(b), the lease may not be made for a period longer than 5 years.

(b) A lease may be made for a period longer than 5 years when bonds are issued under 7-34-2411, in which case the lease may extend until the maturity date of the bonds.

(4) The board may not enter into a lease unless it has advertised in a newspaper published in the county at least once a week for 5 weeks that specified buildings and equipment are for lease for the purpose of a boarding home for aged persons.

History: En. Sec. 1, Ch. 87, L. 1963; R.C.M. 1947, 16-1036; amd. Sec. 1, Ch. 245, L. 1989; amd. Sec. 9, Ch. 520, L. 1995; amd. Sec. 5, Ch. 571, L. 2001; amd. Sec. 86, Ch. 574, L. 2001.

Cross-References

Authorization to lease county property, 7-8-2231.

Part 24
Financing of County-Operated Health Care Facilities

Part Cross-References

County tax levy for health care facilities, 7-6-2512.
Montana Older Americans Act, Title 52, ch. 3, part 5.

7-34-2401. Depletion allowance reserve fund authorized. The governing body of a county may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502.

History: En. 16-1042 by Sec. 1, Ch. 365, L. 1975; R.C.M. 1947, 16-1042; amd. Sec. 10, Ch. 520, L. 1995.

7-34-2402. Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:

(1) public and private grants;

(2) money collected by the health care facility for which the fund is created, from or for indigent patients or residents, that is in excess of the expenses incurred for the care of the patients or residents.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(part); amd. Sec. 11, Ch. 520, L. 1995.

7-34-2403. Accumulation of reserve fund. The depletion allowance reserve fund may accumulate at the discretion of the governing body.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(2).

7-34-2404. Investment of reserve fund. The money held in the depletion allowance reserve fund may be invested as provided by law. All interest earned on the investments is credited to the depletion allowance reserve fund.

History: En. 16-1044 by Sec. 3, Ch. 365, L. 1975; R.C.M. 1947, 16-1044.

7-34-2405 through 7-34-2410 reserved.

7-34-2411. County health care facility bonds authorized. (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county acquiring, erecting, furnishing, equipping, expanding, improving, or maintaining a health care facility under 7-8-2102 or 7-34-2201 or a boarding home under 7-34-2301 may borrow money and issue its bonds for a health care facility or a boarding home, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenue of the facility or boarding home, respectively, including revenue derived from:

(a) fees and payments for health care or boarding home services;

(b) taxes levied under 7-6-2512 or 7-34-2417 for a health care facility;

(c) grants or contributions from the federal government; or

(d) any other sources.

(2) For the security of the bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into, or exercised by a county, including those authorized in 7-6-2512 and this part. The sums required to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenue of the health care facility or boarding home prior to the payment of current costs of operation and maintenance of the facilities.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 12, Ch. 520, L. 1995.

Cross-References

Purposes for which general obligation bonds of a county may be issued, 7-7-2201.

Authority to issue refunding general obligation bonds, 7-7-2301.

7-34-2412. Repealed. Sec. 20, Ch. 520, L. 1995.

History: En. 16-1047 by Sec. 3, Ch. 511, L. 1975; amd. Sec. 2, Ch. 513, L. 1977; R.C.M. 1947, 16-1047.

7-34-2413. Limitations on bond authority. The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(1) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(2) the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

Cross-References

Limitation on amount of bonded indebtedness, 7-7-2203.

7-34-2414. Election required on question of issuance of bonds. (1) A county may not issue bonds to which all or a portion of the taxes levied under 7-6-2512 are pledged or to which the general tax authorized under 7-34-2418 is pledged until the question of approval of the issuance of the bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor of issuing the bonds. A special election must be conducted in conjunction with a regular or primary election. The notice and conduct of the election must be governed, to the extent applicable, by the laws governing the election on county general obligation bonds in chapter 7, part 22.

(2) If less than a majority of the electors voting on the issuance of the bonds vote in favor of the issuance of the bonds, the county may not issue the bonds under 7-34-2411.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(2)(c); amd. Sec. 349, Ch. 571, L. 1979; amd. Sec. 47, Ch. 575, L. 1981; amd. Sec. 63, Ch. 387, L. 1995; amd. Sec. 13, Ch. 520, L. 1995.

Cross-References

Petition and election required for issuance of certain bonds, 7-7-2223.

7-34-2415. Details of bonds. (1) The bonds may be sold at public or private sale and bear interest at a rate or rates as provided in 17-5-102. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 and 7-34-2413 through 7-34-2418, any bonds issued pursuant to 7-34-2411 and 7-34-2413 through 7-34-2418 by a county must be payable as to principal and interest solely from revenue of the county and must state on their face the applicable limitations or restrictions regarding the source or sources from which the principal and interest are payable.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 9, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 29, Ch. 370, L. 1987; amd. Sec. 14, Ch. 520, L. 1995.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

7-34-2416. Tax-exempt status of bonds. Bonds issued by a county pursuant to the provisions of 7-34-2411 and 7-34-2413 through 7-34-2418 are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-2110(2)(a).

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 15, Ch. 520, L. 1995.

7-34-2417. Health care facility tax levy authorized. If the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under 7-34-2411 for a health care facility may, subject to 15-10-420, levy taxes on the taxable value of all taxable property within the county in the manner provided for public hospital districts under 7-34-2133.

History: En. 16-1046 by Sec. 2, Ch. 511, L. 1975; R.C.M. 1947, 16-1046; amd. Sec. 3, Ch. 625, L. 1983; amd. Sec. 16, Ch. 520, L. 1995; amd. Sec. 77, Ch. 584, L. 1999; amd. Sec. 87, Ch. 574, L. 2001.

7-34-2418. General tax to support bonds authorized. (1) (a) The governing body of a county may, with respect to bonds issued by the county pursuant to 7-34-2411 for a health care facility and if approved by the voters as provided in 7-34-2414, by resolution covenant that:

(i) in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of the deficiency; and

(ii) at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county for the payment of the deficiency.

(b) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(2) The taxes are not subject to any limitation of rate or amount applicable to other county taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency.

(3) In the event that the health care facility for which bonds are issued pursuant to 7-34-2411 is a joint institution, as provided in part 25, and the deficiency tax levy is authorized under 7-34-2417, the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for the bonds in the manner as the counties shall determine.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(4); amd. Sec. 17, Ch. 520, L. 1995.

Cross-References

Authorization for county mill levy, 7-6-2501.

Part 25
Multicounty Operation of Health Care Facilities and Nursing Homes

Part Cross-References

County tax levy for health care facilities, 7-6-2512.

Nursing home administrators, Title 37, ch. 9.

7-34-2501. Definitions. As used in this part, the following definitions apply:

(1) "Contract" means the agreement entered into by two or more counties for the purpose of creating a joint institution.

(2) "Joint institution" means a county health care facility or boarding home for the aged constructed, purchased, leased, equipped, and operated by two or more counties pursuant to the terms of the contract creating it.

History: En. Sec. 1, Ch. 100, L. 1965; R.C.M. 1947, 16-1039; amd. Sec. 18, Ch. 520, L. 1995.

7-34-2502. Joint institutions authorized. Two or more counties may by contract create a joint institution which will be operated and financed by the contracting counties.

History: En. Sec. 2, Ch. 100, L. 1965; R.C.M. 1947, 16-1040.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-34-2503. Contract for joint institution. The contract creating the joint institution shall provide:

(1) the total proposed expenditure for the construction, purchase, or lease of the joint institution and the proposed cost of equipping and operating the joint institution;

(2) for the management of the joint institution by a method which will provide that each contracting county shall be represented and have an active part in the management of the joint institution;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purpose of this part.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

Cross-References

County contracts, Title 7, ch. 5, part 23.

7-34-2504. Division of costs among counties. The total cost of the joint institution shall be divided between the contracting counties in such manner as they shall determine.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

Cross-References

Authorization to appropriate funds for purpose of interlocal agreement, 7-11-108.

Parts 26 through 40 reserved

Part 41
Municipal Hospital Services

Part Cross-References

Hospitals and related facilities, Title 50, ch. 5.

7-34-4101. Detention hospitals. In case of necessity, the city or town council has power to establish, at a suitable place within or without the limits of the city or town, a hospital to prevent the spread of smallpox or other contagious or infectious diseases, to regulate the control thereof, to do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

History: En. Subd. 45, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.44, R.C.M. 1935; R.C.M. 1947, 11-947.

Cross-References

Powers and duties of local boards of health, 50-2-116.

CHAPTER 35
CEMETERY SERVICES

Part 1 — General Provisions Applicable to Local Governments (Repealed)

Parts 2 through 20 reserved

Part 21 — Cemetery Districts

7-35-2101. Repealed.
7-35-2102. Repealed.
7-35-2103. Repealed.
7-35-2104. Repealed.
7-35-2105. Repealed.
7-35-2106. Repealed.

7-35-2107. Repealed.
7-35-2108. Repealed.
7-35-2109. Repealed.
7-35-2110. Repealed.
7-35-2111. Repealed.
7-35-2112. Repealed.
7-35-2113. Repealed.
7-35-2114. Repealed.
7-35-2115. Repealed.
7-35-2116. Repealed.
7-35-2117 through 7-35-2120 reserved.
7-35-2121. Repealed.
7-35-2122. Repealed.
7-35-2123. Repealed.
7-35-2124. Repealed.
7-35-2125. Repealed.
7-35-2126 through 7-35-2130 reserved.
7-35-2131. Establishment and maintenance of permanent care and improvement fund.
7-35-2132. Application for appointment of trustees of fund.
7-35-2133. Appointment of trustees of fund.
7-35-2134. Use of bank as trustee.
7-35-2135. Term of office for trustees of fund.
7-35-2136. Vacancies.
7-35-2137. Compensation of trustees of fund.
7-35-2138. Secretary for trustees of fund.
7-35-2139. Bond requirements for trustees of fund.
7-35-2140. Effect of failure to renew bond.
7-35-2141. Reduction of bond by deposit of money and securities.
7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund.
7-35-2143. Recording of instruments of appointment of trustees of fund.
7-35-2144. Vesting of funds in trustees.
7-35-2145. Vesting of powers and duties in new trustees.
7-35-2146. Administration of permanent care and improvement fund.
7-35-2147. Financial management of fund.
7-35-2148. Disposition of fund income.
7-35-2149. Notice to purchasers of cemetery lots of transfers to fund.
7-35-2150. Annual report — availability.

Part 22 — Cemeteries in Counties

7-35-2201. Repealed.
7-35-2202. Repealed.
7-35-2203 and 7-35-2204 reserved.
7-35-2205. Veterans' cemetery.

Parts 23 through 40 reserved

Part 41 — Cemeteries in Municipalities

7-35-4101. Repealed.
7-35-4102. Vesting of title to cemetery grounds — restrictions on use.
7-35-4103. Repealed.
7-35-4104. Repealed.
7-35-4105. Repealed.
7-35-4106. Repealed.
7-35-4107. Repealed.
7-35-4108. Repealed.
7-35-4109. Repealed.

Chapter Cross-References

Cemetery associations, Title 35, ch. 20.

Part 1
General Provisions Applicable to Local Governments
(Repealed)

7-35-101. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

7-35-102. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Parts 2 through 20 reserved

Part 21

Cemetery Districts

Part Cross-References

Cemetery associations, Title 35, ch. 20.

7-35-2101. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part).

7-35-2102. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part); amd. Sec. 38, Ch. 349, L. 1985.

7-35-2103. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 3, Ch. 221, L. 1943; amd. Sec. 3, Ch. 16, L. 1945; R.C.M. 1947, 9-203; amd. Sec. 734, Ch. 61, L. 2007.

7-35-2104. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 4, Ch. 221, L. 1943; amd. Sec. 4, Ch. 16, L. 1945; R.C.M. 1947, 9-204.

7-35-2105. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 221, L. 1943; amd. Sec. 1, Ch. 16, L. 1945; R.C.M. 1947, 9-201(part).

7-35-2106. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 5, Ch. 221, L. 1943; amd. Sec. 5, Ch. 16, L. 1945; R.C.M. 1947, 9-205; amd. Sec. 350, Ch. 571, L. 1979; amd. Sec. 64, Ch. 387, L. 1995.

7-35-2107. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 6, Ch. 221, L. 1943; amd. Sec. 6, Ch. 16, L. 1945; R.C.M. 1947, 9-206.

7-35-2108. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 7, Ch. 221, L. 1943; amd. Sec. 7, Ch. 16, L. 1945; amd. Sec. 1, Ch. 7, L. 1975; R.C.M. 1947, 9-207; amd. Sec. 3, Ch. 213, L. 1979; amd. Sec. 23, Ch. 543, L. 1995.

7-35-2109. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 8, Ch. 221, L. 1943; amd. Sec. 8, Ch. 16, L. 1945; R.C.M. 1947, 9-208; amd. Sec. 24, Ch. 543, L. 1995.

7-35-2110. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).

7-35-2111. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

7-35-2112. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part); amd. Sec. 67, Ch. 354, L. 2001.

7-35-2113. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 12, Ch. 221, L. 1943; amd. Sec. 12, Ch. 16, L. 1945; R.C.M. 1947, 9-212.

7-35-2114. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 13, Ch. 221, L. 1943; amd. Sec. 13, Ch. 16, L. 1945; R.C.M. 1947, 9-213.

7-35-2115. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Secs. 14, 15, Ch. 221, L. 1943; amd. Secs. 14, 15, Ch. 16, L. 1945; R.C.M. 1947, 9-214, 9-215(part); amd. Sec. 39, Ch. 349, L. 1985.

7-35-2116. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 15, Ch. 221, L. 1943; amd. Sec. 15, Ch. 16, L. 1945; R.C.M. 1947, 9-215(part).

7-35-2117 through 7-35-2120 reserved.

7-35-2121. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part); amd. Sec. 4, Ch. 140, L. 1989; amd. Sec. 12, Ch. 130, L. 2005.

7-35-2122. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part); amd. Sec. 13, Ch. 263, L. 1979; amd. Sec. 78, Ch. 584, L. 1999; amd. Sec. 88, Ch. 574, L. 2001.

7-35-2123. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 94, L. 1951; R.C.M. 1947, 9-209.1.

7-35-2124. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).

7-35-2125. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part).

7-35-2126 through 7-35-2130 reserved.

7-35-2131. Establishment and maintenance of permanent care and improvement fund. Any public cemetery district formed under the provisions of this part which shall have established and be maintaining a cemetery shall provide, in the manner set forth in 7-35-2131 through 7-35-2150, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery. This fund shall be known as the permanent care and improvement fund of such public cemetery district.

History: En. Sec. 1, Ch. 165, L. 1955; R.C.M. 1947, 9-216.

Cross-References

Cemetery associations — permanent care and improvement fund, Title 35, ch. 20, part 3.

7-35-2132. Application for appointment of trustees of fund. Whenever money to the amount of $100 shall have been received by such public cemetery district heretofore or hereafter formed, either from the sale of lots or from direct payments of such public cemetery district toward such a fund by lot owners, the trustees of such public cemetery district shall immediately make application to the judge of the district court of the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).

Cross-References

Cemetery associations — trustees of fund — appointment by District Court — qualifications — powers, 35-20-302.

7-35-2133. Appointment of trustees of fund. (1) The district judge shall, upon receipt of the application, appoint a trustee or a board of trustees to administer the fund from a list submitted to the judge by the trustees of the public cemetery district.

(2) The number of trustees for the fund may not exceed five, with the exact number to be set at the discretion of the trustees of the public cemetery district. Each trustee for the fund must be a resident of the state during the time the trustee exercises the powers of the trust.

(3) If a person who is chosen and appointed fails to qualify within 30 days after appointment, a vacancy exists, and the judge of the district court shall appoint from a list submitted to the judge by the trustees of the public cemetery district a person possessing the qualifications to fill the vacancy in the board of trustees of the fund.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part); amd. Sec. 4, Ch. 213, L. 1979; amd. Sec. 735, Ch. 61, L. 2007.

Cross-References

Cemetery associations — trustees of fund — appointment by District Court — qualifications — powers, 35-20-302.

Cemetery associations — trustees of fund — term, 35-20-303.

7-35-2134. Use of bank as trustee. The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. In that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).

Cross-References

Trust company defined — purposes for which may be formed, 32-1-107.

7-35-2135. Term of office for trustees of fund. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as provided in 7-35-2131 through 7-35-2150.

History: En. Sec. 3, Ch. 165, L. 1955; R.C.M. 1947, 9-218.

Cross-References

Cemetery associations — trustees of fund — term, 35-20-303.

7-35-2136. Vacancies. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 5, Ch. 165, L. 1955; R.C.M. 1947, 9-220.

Cross-References

Cemetery associations — trustees — vacancies — how filled, 35-20-305.

7-35-2137. Compensation of trustees of fund. (1) The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the public cemetery district on the other provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of $100 per annum.

(2) The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the public cemetery district until such trust fund shall reach $10,000, and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 13, Ch. 165, L. 1955; R.C.M. 1947, 9-228.

Cross-References

Cemetery associations — compensation of trustees of fund, 35-20-314.

7-35-2138. Secretary for trustees of fund. The secretary of the public cemetery district shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 14, Ch. 165, L. 1955; R.C.M. 1947, 9-229.

Cross-References

Cemetery associations — secretary of board, 35-20-309.

7-35-2139. Bond requirements for trustees of fund. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to the trust or trusteeship, each person chosen to be a trustee of the fund shall give to the public cemetery district for which the trust is maintained a bond in a sum equaling at least 1 $\frac{1}{3}$ times the value of the property on hand at the time of giving the bond, with good and sufficient sureties who shall justify in the aggregate in at least double the amount of the bond. The bond must be conditioned for the due and faithful performance of the trust until July 1 of the next even-numbered year after the year in which the bond is given and until the trustee gives a new bond as provided in this section.

(2) On July 1 in each even-numbered year, each trustee shall give a new bond conditioned, in an amount, and with sureties as provided in subsection (1).

(3) The bonds must be approved by a judge of the district court for the judicial district in which the cemetery for the trust exists or some part of the trust is situated and must be filed with the clerk of the district court of the county in which the cemetery is located.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part); amd. Sec. 736, Ch. 61, L. 2007.

Cross-References

Cemetery associations — trustees of fund — bond required, 35-20-304.

7-35-2140. Effect of failure to renew bond. Any failure to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for the removal of any trustee within the discretion of the district court.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

Cross-References

Cemetery associations — trustees of fund — renewal of bond, 35-20-304.

7-35-2141. Reduction of bond by deposit of money and securities. (1) For the purpose of fixing the amount of the bond, the value of the property on hand may be reduced in an amount equal to the value of the money, bonds, and securities that the trustee or trustees of the permanent care and improvement fund deposit with the county treasurer as provided in subsection (2).

(2) The trustee or trustees of the fund may deposit for safekeeping the money, bonds, and securities as they see fit with the county treasurer of the county in which the cemetery or some part of the cemetery is situated. The county treasurer shall receive and safely keep all money, bonds, and securities and pay them out or deliver them upon the order of the trustee or a majority of the trustees, when countersigned by a judge of the judicial district and not otherwise, and shall keep an account with the trustee or trustees of all those transactions. For the safekeeping and payment and delivery of all money, bonds, and securities as provided in this section, the treasurer and the treasurer's sureties are liable upon the treasurer's official bond.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part); amd. Sec. 737, Ch. 61, L. 2007.

Cross-References

Cemetery associations — trustees of fund — deposit with County Treasurer, 35-20-304.

7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund. (1) In the case of the failure of the trustees of such public cemetery district to make application to the judge of said district court for the appointment of a board of trustees of such fund as provided in 7-35-2132 or in the case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises, and trusts of such fund shall vest in the district court of the county in which such cemetery or the greater part thereof shall be situated until the appointment and qualification of a new board of trustees. In such cases, such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order.

(2) The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under 7-35-2131 through 7-35-2150. Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all money collected and of all securities on hand, together with all money disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(3) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the public cemetery district, and any trustee of the said trust fund shall have the right to make any application to the court provided for in 7-35-2131 through 7-35-2150.

History: En. Sec. 7, Ch. 165, L. 1955; R.C.M. 1947, 9-222.

Cross-References

Cemetery associations — title to funds to vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting, 35-20-307.

7-35-2143. Recording of instruments of appointment of trustees of fund. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the public cemetery district establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such public cemetery district is located.

History: En. Sec. 8, Ch. 165, L. 1955; R.C.M. 1947, 9-223.

Cross-References

Cemetery associations — recording of appointment of trustees, 35-20-308.

7-35-2144. Vesting of funds in trustees. Upon the election, appointment, and qualification, as provided in this part, of the trustees of the fund, all of the title to the funds included in the trust and all of the rights, powers, authorities, franchises, and trusts pertaining to the trust vest in the trustees. In case of the failure of any of those chosen and appointed to qualify within 30 days after their appointment, then the rights, powers, authorities, franchises, and trusts vest in those who qualify.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part); amd. Sec. 738, Ch. 61, L. 2007.**

Cross-References

Cemetery associations — transfer of money received by association to trustees of fund, 35-20-310.

7-35-2145. Vesting of powers and duties in new trustees. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: **En. Sec. 6, Ch. 165, L. 1955; R.C.M. 1947, 9-221.**

Cross-References

Cemetery associations — all powers to vest in survivors until vacancy filled — succession to powers, 35-20-306.

7-35-2146. Administration of permanent care and improvement fund. (1) From and after March 4, 1955, the trustees of such cemetery district as are mentioned in 7-35-2132 shall provide, by resolution spread upon the minutes of such public cemetery district, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% or more than 40% of the money received from the sale of cemetery lots designated as perpetual care lots by said public cemetery district, together with all money theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly, upon the first day of January, April, July, and October of each year, to the trustees of such fund.

(2) If at any time there shall remain in the hands of such public cemetery district unexpended money over and above the liabilities of the public cemetery district, the board of trustees of such public cemetery district may by a two-thirds vote appropriate the whole or any portion of such unexpended money to such permanent care and improvement fund, provided that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of $5,000 per acre of the cemetery to be cared for therewith, and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: **En. Sec. 9, Ch. 165, L. 1955; R.C.M. 1947, 9-224.**

Cross-References

Cemetery associations — principal of fund to be reserved — income to be turned over to treasurer, 35-20-311.

Cemetery associations — use of income of fund, 35-20-312.

7-35-2147. Financial management of fund. (1) The principal of such fund shall in all cases remain intact and inviolate.

(2) The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in Montana and not otherwise, provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district.

(3) The trustees of such fund shall, on January 1 and July 1 in each year, turn over to the treasurer of such public cemetery district all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: **(1), (3)En. Sec. 10, Ch. 165, L. 1955; Sec. 9-225, R.C.M. 1947; (2)En. Sec. 12, Ch. 165, L. 1955; amd. Sec. 6, Ch. 98, L. 1974; Sec. 9-227, R.C.M. 1947; R.C.M. 1947, 9-225, 9-227.**

Cross-References

Cemetery associations — principal of fund to be reserved — income to be turned over to treasurer, 35-20-311.

Cemetery associations — use of income of fund, 35-20-312.

Cemetery associations — investment of fund, 35-20-313.

7-35-2148. Disposition of fund income. (1) The income of that portion of such fund received from the sale of lots designated as perpetual care lots shall be used, in the discretion of the trustees of such public cemetery district, solely for the care, maintenance, and improvement of such cemetery lots and its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively.

(2) In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such public cemetery district, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

History: En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).

Cross-References

Cemetery associations — use of income of fund, 35-20-312.

7-35-2149. Notice to purchasers of cemetery lots of transfers to fund. After July 1, 1955, all public cemetery districts shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of 7-35-2131 through 7-35-2150 to the permanent care and improvement fund of such public cemetery district and also such further sum, if there be any, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed to be transferred as hereinbefore provided.

History: En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).

Cross-References

Cemetery associations — use of proceeds from sale of lots, 35-20-214.

7-35-2150. Annual report — availability. The trustee or the board of trustees of such fund shall annually on January 1 make its report of the condition of such trust fund to the trustees of the public cemetery district as hereinbefore provided. Such reports shall always be kept by the secretary of such public cemetery district and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 15, Ch. 165, L. 1955; R.C.M. 1947, 9-230.

Cross-References

Cemetery associations — annual report of trustees — duty of County Attorney, 35-20-207.

Part 22
Cemeteries in Counties

Part Cross-References

Cemetery associations, Title 35, ch. 20.

7-35-2201. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part); amd. Sec. 27, Ch. 125, L. 2001.

7-35-2202. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

7-35-2203 and 7-35-2204 reserved.

7-35-2205. Veterans' cemetery. (1) Pursuant to Article II, section 35, of the Montana constitution, a county may provide for the construction, maintenance, and administration of a veterans' cemetery, set the standards by which the cemetery must be constructed and maintained, and determine qualifications for burial in the cemetery.

(2) Subject to 15-10-420, to fund the cemetery, the county may impose a property tax levy, accept gifts, grants, or donations, and receive allowances and collect charges authorized by state or federal law regarding burial of a veteran or a veteran's spouse.

History: En. Sec. 1, Ch. 112, L. 2007.

Parts 23 through 40 reserved

Part 41
Cemeteries in Municipalities

Part Cross-References

Cemetery associations, Title 35, ch. 20.

7-35-4101. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Subd. 46, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.45, R.C.M. 1935; R.C.M. 1947, 11-948.

7-35-4102. Vesting of title to cemetery grounds — restrictions on use. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village and used by the inhabitants thereof as a burial-ground continuously without interruption for 5 years, is vested in the inhabitants of such city, town, or village. The lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed and no other interred therein upon the order of the board of county commissioners, city council, or other body having authority when it appears that the public health is endangered or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907; re-en. Sec. 5168, R.C.M. 1921; Cal. Pol. C. Sec. 3105; re-en. Sec. 5168, R.C.M. 1935; R.C.M. 1947, 9-301.

Cross-References

Municipalities — power of condemnation, 7-5-4106.

7-35-4103. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907; re-en. Sec. 5169, R.C.M. 1921; Cal. Pol. C. Sec. 3106; re-en. Sec. 5169, R.C.M. 1935; R.C.M. 1947, 9-302.

7-35-4104. Repealed. Sec. 8, Ch. 18, L. 1999.

History: En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 5170, R.C.M. 1921; Cal. Pol. C. Sec. 3107; re-en. Sec. 5170, R.C.M. 1935; R.C.M. 1947, 9-303; amd. Sec. 14, Ch. 263, L. 1979.

7-35-4105. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).

7-35-4106. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907; re-en. Sec. 5171, R.C.M. 1921; Cal. Pol. C. Sec. 3108; re-en. Sec. 5171, R.C.M. 1935; R.C.M. 1947, 9-304.

7-35-4107. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).

7-35-4108. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907; re-en. Sec. 5173, R.C.M. 1921; re-en. Sec. 5173, R.C.M. 1935; R.C.M. 1947, 9-306.

7-35-4109. Repealed. Sec. 39, Ch. 286, L. 2009.

History: En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907; re-en. Sec. 5174, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 9-307.

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RESERVED

TITLE 10

MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

Ch.

1. Militia.
2. Veterans.
3. Disaster and Emergency Services.
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Chapter Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.
Importation of armed persons, Art. II, sec. 33, Mont. Const.
Composition of militia, Art. VI, sec. 13, Mont. Const.
Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.
Call of forces — when authorized, Art. VI, sec. 13, Mont. Const.
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Part 1
General Provisions

10-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means the department of military affairs.

(2) "Militia" means all the military forces of this state, whether organized or active or inactive.

(3) "National guard" means the army national guard and the air national guard.

(4) "Officer" means a commissioned or warrant officer.

(5) "Youth challenge program" means the Montana national guard youth challenge program established pursuant to 10-1-1401.

History: En. 77-1601 by Sec. 25, Ch. 94, L. 1974; amd. Sec. 7, Ch. 49, L. 1977; R.C.M. 1947, 77-1601; amd. Sec. 1, Ch. 347, L. 2007.

Cross-References

Department of Military Affairs created, 2-15-1201.

10-1-102. Powers and duties of department of military affairs. Under the direction of the governor, the department shall:

(1) keep a roster of all officers and enlisted persons of the militia of this state whether active, inactive, or retired;

(2) supervise, administer, and coordinate civil defense and disaster control activities;

(3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) maintain the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;

(5) establish and maintain the headquarters required for the militia;

(6) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations.

History: En. 77-1606 by Sec. 30, Ch. 94, L. 1974; amd. Sec. 8, Ch. 49, L. 1977; R.C.M. 1947, 77-1606.

Cross-References

Department power to authorize construction on federal land, 18-2-102.
Construction — contracting agency, 18-2-103.
Montana Historical Society directed to store certain war records, 22-3-221.

10-1-103. Classes of militia. The classes of the militia are:

(1) the organized militia, which consists of the national guard and the Montana home guard;

(2) the unorganized militia, which consists of the members of the militia who are not members of the organized militia.

History: En. 77-1602 by Sec. 26, Ch. 94, L. 1974; R.C.M. 1947, 77-1602.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.
Militia defined, 10-1-101.
Composition of home guard, 10-1-701.

10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, 2009, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, 2009, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.

History: En. 77-1603 by Sec. 27, Ch. 94, L. 1974; R.C.M. 1947, 77-1603; amd. Sec. 1, Ch. 430, L. 1983; amd. Sec. 1, Ch. 120, L. 1995; amd. Sec. 1, Ch. 10, L. 1997; amd. Sec. 1, Ch. 33, L. 1999; amd. Sec. 1, Ch. 4, L. 2001; amd. Sec. 1, Ch. 17, L. 2003; amd. Sec. 1, Ch. 61, L. 2005; amd. Sec. 1, Ch. 26, L. 2007; amd. Sec. 1, Ch. 49, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 49 in (1) near beginning and in (2) near beginning after "October 1" substituted "2009" for "2007". Amendment effective October 1, 2009.

Applicability: Section 2, Ch. 49, L. 2009, provided: "[This act] applies to events that occur and proceedings begun on and after October 1, 2009."

10-1-105. Rules and regulations by governor and adjutant general. (1) The governor may prescribe rules to carry out the functions and duties under this title and the constitution of this state.

(2) The adjutant general may adopt rules and regulations governing the armed forces of the state and to carry out the duties of the adjutant general and the duties of the department.

History: En. 77-1604 by Sec. 28, Ch. 94, L. 1974; R.C.M. 1947, 77-1604; amd. Sec. 1, Ch. 91, L. 1995; amd. Sec. 2, Ch. 61, L. 2005.

Cross-References

State militia exempt from public participation and administrative procedures concerning rulemaking, 2-3-102, 2-4-102.

10-1-106. Proclamation of martial rule. When the militia is employed in aid of civil authority, the governor may by proclamation declare any part of a county or municipality in which troops are serving to be subject to martial rule.

History: En. 77-1605 by Sec. 29, Ch. 94, L. 1974; R.C.M. 1947, 77-1605.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.
Limitations on powers of militia, 10-3-102.
Governor as commander-in-chief during emergencies, 10-3-305.

10-1-107. Property remains public property. All property issued to organizations and members of the organized militia remains public property.

History: En. 77-2001 by Sec. 51, Ch. 94, L. 1974; R.C.M. 1947, 77-2001.

Cross-References

Damage or destruction of public property unlawful, 45-6-101.

10-1-108. Armories — acquisition and sale — proceeds — account. (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.

(3) (a) There is a Montana national guard land purchase account in the state special revenue fund. If the state sells an armory, the money from the sale must be deposited in the account.

(b) Money in the account is statutorily appropriated, as provided in 17-7-502, for the purposes described in subsection (4).

(c) Any interest and income accruing on the account must be deposited in the state general fund.

(4) Money in the account may be used only for preparations to purchase or the purchase of land necessary for the Montana national guard's mission and is expendable solely upon the authorization of the governor.

History: **En. 77-2006 by Sec. 56, Ch. 94, L. 1974; R.C.M. 1947, 77-2006; amd. Sec. 1, Ch. 227, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 227 inserted (3) and (4) establishing the Montana national guard land purchase account and directing expenditures from the account. Amendment effective April 16, 2009.

Cross-References

Use of armories by home guard, 10-1-703.
Fire protection — armories, Title 50, ch. 61.

10-1-109. Lease of real property for military facilities. The department of military affairs may lease real property for armories or other military facilities.

History: **En. 77-2007 by Sec. 57, Ch. 94, L. 1974; R.C.M. 1947, 77-2007.**

Cross-References

Use of armories by home guard, 10-1-703.

10-1-110. Repealed. Sec. 16, Ch. 724, L. 1991.

History: **En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967; R.C.M. 1947, 53-106.7; amd. Sec. 1, Ch. 306, L. 1983.**

10-1-111. Immunity from liability. The state, an officer, employee, or agent of the state, or a member of the militia may not be held liable in a civil action for damages that result from an action that occurs while the officer, employee, agent, or member is considered an employee of the federal government under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq.

History: **En. Sec. 1, Ch. 87, L. 1997.**

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.
Liability exposure and insurance coverage, Title 2, ch. 9.
Personnel immune from liability, 10-3-111.

10-1-112 through 10-1-120 reserved.

10-1-121. Repealed. Sec. 3, Ch. 577, L. 2005.

History: **En. Sec. 1, Ch. 418, L. 1997.**

Part 2
Officers of Militia

10-1-201. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, the person must be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board and the nature and scope of examinations must be prescribed by federal law or regulation or state regulations.

(4) Each officer shall hold office under the appointment until the officer is regularly appointed to another grade or office or until the officer is regularly retired, discharged, dismissed, or placed in the reserve.

History: **En. 77-1701 by Sec. 31, Ch. 94, L. 1974; R.C.M. 1947, 77-1701; amd. Sec. 1, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Militia officers commissioned by Governor, 2-16-204.
Officer defined, 10-1-101.
Pay and allowances, 10-1-502.
Allowances for incidental expenses, 10-1-503.
Authority to arrest, 10-1-611, 10-1-612.
Medical officers exempt from medical license requirements, 37-3-103(1)(i).

10-1-202. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office:

"I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of .... in the .... upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, the officer is considered to have resigned the office and a new appointment must be made.

History: En. 77-1702 by Sec. 32, Ch. 94, L. 1974; R.C.M. 1947, 77-1702; amd. Sec. 2, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Oath of enlistment, 10-1-302.

10-1-203. Retirement of officers. (1) An officer of the national guard must be retired by order of the governor for the following reasons:

(a) upon loss of federal recognition; or

(b) unfitness for military service because of a physical disability.

(2) An officer is retired from the militia with the grade and rank held at the time of retirement.

History: En. 77-1703 by Sec. 33, Ch. 94, L. 1974; R.C.M. 1947, 77-1703; amd. Sec. 1, Ch. 9, L. 1997.

Cross-References

Examination as to fitness for military service, 10-1-206.
Members of National Guard considered state employees, 19-3-402.
Election to qualify military service under public employees' retirement system, 19-3-503.

10-1-204. Resignation of officers. An officer may resign, but the resignation is not effective until it has been accepted by the governor.

History: En. 77-1704 by Sec. 34, Ch. 94, L. 1974; R.C.M. 1947, 77-1704.

Cross-References

Governor to commission all militia officers, 2-16-204.
Governor to appoint all militia officers, 10-1-201.

10-1-205. Vacating commissions or warrants. The commission or warrant of an officer must be vacated:

(1) upon acceptance by the governor of the resignation of the officer; or

(2) by an order of the governor discharging the officer:

(a) for failure to maintain the officer's qualifications for federal recognition;

(b) upon the scheduled or actual termination or withdrawal of the officer's federal recognition when federal recognition is a prerequisite for continued service;

(c) upon a change in federal reserve status that makes the officer ineligible for continued assignment to a unit of the organized militia;

(d) for the officer's absence from duty without leave for more than 3 months;

(e) upon the recommendation of a board of examination or the sentence of a court-martial;

(f) upon conviction of a felony; or

(g) upon final sentencing to confinement in a federal or state penitentiary or correctional institution as defined in 45-2-101.

History: En. 77-1705 by Sec. 35, Ch. 94, L. 1974; amd. Sec. 9, Ch. 49, L. 1977; R.C.M. 1947, 77-1705; amd. Sec. 1, Ch. 28, L. 2005.

Cross-References

Federal regulations to govern militia, 10-1-104.
Persons subject to jurisdiction of military courts, 10-1-402.

10-1-206. Examination as to fitness — board of examination. (1) The governor, when the governor considers it necessary, may order an officer to appear before a board of examination. The board of examination consists of three officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

(b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under 10-1-205(2)(e).

(2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or recommend the officer's retirement because of a physical inability to perform active service.

(3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of the officer's commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

History: En. 77-1706 by Sec. 36, Ch. 94, L. 1974; R.C.M. 1947, 77-1706; amd. Sec. 3, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

National Guard officers retired by Governor, 10-1-203.

10-1-207. Uniform allowance for officers. There may be paid annually on April 1 a uniform allowance to each properly uniformed and equipped officer of the organized militia.

History: En. 77-1707 by Sec. 37, Ch. 94, L. 1974; R.C.M. 1947, 77-1707; amd. Sec. 1, Ch. 20, L. 1995.

Cross-References

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

10-1-208. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

History: En. 77-1708 by Sec. 38, Ch. 94, L. 1974; R.C.M. 1947, 77-1708.

Cross-References

Leave of absence for public employees attending military training, 10-1-1009.

Part 3
Enlisted Members

10-1-301. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, reenlistments, and extension of enlistments shall be for periods as prescribed by the department.

History: En. 77-1801 by Sec. 39, Ch. 94, L. 1974; R.C.M. 1947, 77-1801.

Cross-References

Governor authorized to extend terms of enlistment, 10-1-303.

Pay and allowances, 10-1-502.

10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this .... day of .... in the .... of the United States and the state of Montana for a period of .... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted personnel.

History: En. 77-1802 by Sec. 40, Ch. 94, L. 1974; R.C.M. 1947, 77-1802; amd. Sec. 2, Ch. 430, L. 1983; amd. Sec. 4, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Officer's oath, 10-1-202.

10-1-303. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until 6 months after the termination of that emergency.

History: En. 77-1803 by Sec. 41, Ch. 94, L. 1974; R.C.M. 1947, 77-1803.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-304. Retirement of enlisted members. An enlisted member of the national guard must be retired by order of the governor for the following reasons:

(1) upon loss of active reserve status; or

(2) unfitness for military service because of a physical disability.

History: En. 77-1804 by Sec. 42, Ch. 94, L. 1974; R.C.M. 1947, 77-1804; amd. Sec. 2, Ch. 9, L. 1997.

Cross-References

Members of National Guard considered state employees, 19-3-402.
Election to qualify military service under public employees' retirement system, 19-3-503.

Part 4
Military Courts

10-1-401. Courts — composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

History: En. 77-1901 by Sec. 43, Ch. 94, L. 1974; R.C.M. 1947, 77-1901.

Cross-References

Federal regulations to govern, 10-1-104.
Rules by Governor and Adjutant General, 10-1-105.

10-1-402. Persons subject. All members of the organized militia and all other persons lawfully called, ordered, or drafted for duty in the organized militia are subject to this part from the dates they are required by the terms of the call, order, or other directive to serve.

History: En. 77-1902 by Sec. 44, Ch. 94, L. 1974; R.C.M. 1947, 77-1902.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

10-1-403. Territorial applicability. (1) This part is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

History: En. 77-1903 by Sec. 45, Ch. 94, L. 1974; R.C.M. 1947, 77-1903.

Cross-References

Cession and retrocession of state jurisdiction generally, Title 2, ch. 1, part 2.
State criminal jurisdiction, 46-2-101.

10-1-404. Persons authorized to execute process. All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute it and make return thereof to the officer issuing it.

History: En. 77-1904 by Sec. 46, Ch. 94, L. 1974; R.C.M. 1947, 77-1904.

Cross-References

Service of process on military reservations, 2-1-204.
Return of process generally, Title 25, ch. 3, part 6.

10-1-405. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court and shall confine the person in accordance with the direction of the court.

History: En. 77-1905 by Sec. 47, Ch. 94, L. 1974; R.C.M. 1947, 77-1905; amd. Sec. 5, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

County jails, Title 7, ch. 32, part 22.
Municipal jails, Title 7, ch. 32, part 42.

10-1-406. Reporter and witness fees. A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as provided by law for similar services in civil courts.

History: En. 77-1906 by Sec. 48, Ch. 94, L. 1974; R.C.M. 1947, 77-1906.

Cross-References

District Court reporter's salary and expenses, 3-5-602.
Cost of copies of proceedings, 3-5-604.
Fee for court reporter, 25-1-202.
Witness fees generally, Title 26, ch. 2, part 5.

10-1-407. Fees of civil officers — records. Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

History: En. 77-1907 by Sec. 49, Ch. 94, L. 1974; R.C.M. 1947, 77-1907.

Cross-References

Sheriff's fees for service of process and other papers, 7-32-2141.

10-1-408. Trial by civil authority — when authorized. In a case where the offense charged is also an offense against civil authority, the convening authority of a court-martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

History: En. 77-1908 by Sec. 50, Ch. 94, L. 1974; R.C.M. 1947, 77-1908.

Cross-References

Sovereignty and jurisdiction of state, Title 2, ch. 1, part 1.
Cession and retrocession of jurisdiction by state, Title 2, ch. 1, part 2.
State criminal jurisdiction, 46-2-101.
State sovereignty in space, 67-1-202.

10-1-409 and 10-1-410 reserved.

10-1-411. Administration of military justice. (1) When a court-martial is convened, the senior judge advocate of that element shall assign trial counsel and defense counsel for the court-martial.

(2) A military judge appointed pursuant to 10-1-104 and the manual for courts-martial must be appointed by the adjutant general. The military judge must be an attorney licensed to practice law in the state of Montana and a member of the Montana national guard senior in rank to the accused, but may not be the state judge advocate of the Montana national guard. The adjutant general may prescribe additional requirements for a military judge.

(3) Following approval of the findings and sentence of a court-martial by the court-martial convening authority, the findings and sentence or either the findings or sentence may be appealed to the adjutant general of the Montana national guard in a manner directed by the adjutant general. The adjutant general may reverse a decision of the convening authority only if the findings of fact are clearly erroneous, a fraud upon the court has occurred, the law has been incorrectly applied, or the sentence is an abuse of discretion. Because courts-martial are military courts of the military justice system adopted under 10-1-104 and because the federal military appellate courts do not have jurisdiction over national guard members not in active federal service, no appeal to other courts is allowed.

History: En. Sec. 2, Ch. 120, L. 1995.

Part 5
Compensation for Militia

10-1-501. Pay for militia. (1) When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses must be drawn upon funds appropriated by the legislature.

(2) If national guard members are placed on state duty for special work pursuant to 10-1-505, the members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for state duty for special work must be drawn upon funds appropriated by the legislature.

History: En. 77-2002 by Sec. 52, Ch. 94, L. 1974; R.C.M. 1947, 77-2002; amd. Sec. 2, Ch. 176, L. 2007; amd. Sec. 1, Ch. 202, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 202 in (1) at end substituted "funds appropriated by the legislature" for "the general fund of the state". Amendment effective April 15, 2009.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-502. Pay and allowances. (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state must receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state must receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member must receive the pay and allowances as prescribed for an enlisted member of corresponding grade and length of service when on active duty in federal service.

(3) A national guard member placed on state duty for special work, as defined in 10-1-505, must receive the pay and allowances as prescribed for an officer or enlisted member of corresponding grade and length of service when on active duty in federal service.

(4) The pay and allowances provided for in subsections (1) and (2) may not be paid when pay and allowances for the active duty are provided out of federal funds.

History: En. 77-2003 by Sec. 53, Ch. 94, L. 1974; R.C.M. 1947, 77-2003; amd. Sec. 3, Ch. 176, L. 2007.

Cross-References

Exemption from statewide classification and pay plans, 2-18-103.
Extension of terms of service, 10-1-303.
Pay, allowances, pensions, and benefits of home guard, 10-1-704.
Military pay exempt from state taxation, 15-30-2117.

10-1-503. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of the command.

History: En. 77-2004 by Sec. 54, Ch. 94, L. 1974; R.C.M. 1947, 77-2004; amd. Sec. 6, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

10-1-504. Repealed. Sec. 13, Ch. 430, L. 1983.

History: En. 77-2005 by Sec. 55, Ch. 94, L. 1974; R.C.M. 1947, 77-2005.

10-1-505. State duty for special work — definition. (1) To fulfill the department's duties under 10-1-102, the adjutant general as the department head under 2-15-1201 may use national guard resources and place Montana national guard personnel on state duty for special work.

(2) For purposes of this section, "state duty for special work" means any activity, such as administrative functions, exercises, training, coordination, or planning, that is conducted for the purposes of preparing the Montana national guard for active duty ordered by the governor under Article VI, section 13, of the Montana constitution. State duty for special work does not include active duty ordered by the governor under Article VI, section 13.

History: En. Sec. 1, Ch. 176, L. 2007.

Part 6
Rights of and Duties Owed Militia

Part Cross-References

Servicemen to be given special consideration, Art. II, sec. 35, Mont. Const.
Militia members exempt from civil arrest, 46-6-102.

10-1-601. Actions against militia members — attorney fees. When an action is commenced in a court against a member of the organized militia for an act done in an official capacity in the discharge of the member's duty or for an alleged omission to do an act that it was the member's duty to perform, the defendant must be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

History: En. 77-2101 by Sec. 58, Ch. 94, L. 1974; R.C.M. 1947, 77-2101; amd. Sec. 7, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-1-602. Right-of-way while performing military duty. (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail or with the progress of an ambulance or members of a police or fire department.

(3) A person who fails to yield the right-of-way as prescribed by this section is guilty of a misdemeanor.

History: En. 77-2102 by Sec. 59, Ch. 94, L. 1974; amd. Sec. 10, Ch. 49, L. 1977; R.C.M. 1947, 77-2102.

Cross-References

Arrest of trespassers and disturbers, 10-1-612.
Place of imprisonment when none specified, 46-18-211.
Misdemeanor penalty when none specified, 46-18-212.
Police vehicles and authorized emergency vehicles, 61-8-107.
Flashing amber light on mail delivery vehicles, 61-9-229.

10-1-603. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. 77-2103 by Sec. 60, Ch. 94, L. 1974; R.C.M. 1947, 77-2103(1), (2); amd. Sec. 1, Ch. 77, L. 1995.

10-1-604. Renumbered 10-1-1009. Sec. 28, Ch. 381, L. 2005.

10-1-605. Repealed. Sec. 75, Ch. 492, L. 2001.

History: En. Sec. 1, Ch. 106, L. 1943; R.C.M. 1947, 84-5301.

10-1-606. Suspension of property taxes for persons in military service. (1) All taxes, whether on real or personal property, due on property owned by a resident of Montana in the military service, as defined by section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, while serving outside of Montana must be suspended. Proceedings may not be taken for the collection of the taxes and penalties or interest may not accrue until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty. If the taxpayer was wounded, injured, or suffered a disease while serving in a combat zone or participating in a contingency operation as described in 10 U.S.C. 101(a)(13) that is serious enough to require hospitalization, proceedings may not be taken and penalties or interest may not accrue until 1 year after the taxpayer's release from the hospitalization.

(2) To obtain the benefits of this section, the qualified taxpayer or a co-owner of the property or agent of the taxpayer shall file with the treasurer of the county an affidavit stating that the person against whom the taxes are imposed is in military service. The affidavit must be filed on or before the time that taxes would become delinquent. The county treasurer shall record that the collection of the taxes is suspended because of the military service of the taxpayer. This section may not be construed to prevent the county treasurer from receiving payment of any taxes whenever offered.

History: (1)En. Sec. 1, Ch. 14, Ex. L. 1918; re-en. Sec. 2236, R.C.M. 1921; re-en. Sec. 2236, R.C.M. 1935; Sec. 84-41-103, R.C.M. 1947; (2)En. Sec. 2, Ch. 14, Ex. L. 1918; re-en. Sec. 2237, R.C.M. 1921; re-en. Sec. 2237, R.C.M. 1935; Sec. 84-41-104, R.C.M. 1947; R.C.M. 1947, 84-41-103, 84-41-104; amd. Sec. 1, Ch. 587, L. 2005.

Cross-References

Military pay exempt from state taxation, 15-30-2117.

10-1-607 through 10-1-610 reserved.

10-1-611. Authority of commanding officer to arrest. The commanding officer at any drill, parade, encampment, or other duty may order those under the commanding officer's command to perform any military duty the commanding officer requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted person who disobeys the orders of a superior officer.

History: En. 77-2105 by Sec. 62, Ch. 94, L. 1974; R.C.M. 1947, 77-2105; amd. Sec. 8, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Militia members exempt from civil arrest, 46-6-102.

10-1-612. Arrest of trespassers and disturbers. (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who:

(a) interrupts, molests, or disturbs the orderly discharge of duty by those under arms;

(b) disturbs or prevents the passage of troops going to or returning from any duty; or

(c) assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person committing an offense for which an arrest may be made pursuant to this section is guilty of a misdemeanor.

History: En. 77-2106 by Sec. 63, Ch. 94, L. 1974; amd. Sec. 11, Ch. 49, L. 1977; R.C.M. 1947, 77-2106.

Cross-References

Right-of-way while performing military duty, 10-1-602.
Definition of assault, 45-5-201.
Place of imprisonment when none specified, 46-18-211.
Penalty when none specified, 46-18-212.

10-1-613. Unlawful sale or detention of military property. A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia.

History: En. 77-2107 by Sec. 64, Ch. 94, L. 1974; R.C.M. 1947, 77-2107(part).

Cross-References

Property remains public property, 10-1-107.
Unlawful sale as misdemeanor, 10-1-615.
Damage or destruction of public property unlawful, 45-6-101.
Definition of theft, 45-6-301.

10-1-614. Unlawful wearing of uniform. A person who is not a member of the organized militia may not wear the uniform or insignia issued or authorized for use by the organized militia.

History: En. 77-2108 by Sec. 65, Ch. 94, L. 1974; R.C.M. 1947, 77-2108(part).

10-1-615. Misdemeanor violations. A person who violates 10-1-613 or 10-1-614 is guilty of a misdemeanor.

History: Ap. p. Sec. 60, Ch. 94, L. 1974; Sec. 77-2103, R.C.M. 1947; Ap. p. Sec. 64, Ch. 94, L. 1974; Sec. 77-2107, R.C.M. 1947; Ap. p. Sec. 65, Ch. 94, L. 1974; Sec. 77-2108, R.C.M. 1947; R.C.M. 1947, 77-2103(3), 77-2107(part), 77-2108(part); amd. Sec. 23, Ch. 381, L. 2005.

Cross-References

Place of imprisonment when none specified, 46-18-211.
Misdemeanor penalty when none specified, 46-18-212.

Part 7
Home Guard

10-1-701. Home guard — organization and composition. The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

History: En. 77-2201 by Sec. 66, Ch. 94, L. 1974; R.C.M. 1947, 77-2201.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.
Classes of militia, 10-1-103.
Rules by Governor, 10-1-105.

10-1-702. Gubernatorial rules for guard. The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

History: En. 77-2202 by Sec. 67, Ch. 94, L. 1974; R.C.M. 1947, 77-2202.

Cross-References

Federal regulations to govern, 10-1-104.
Rules by Governor, 10-1-105.

10-1-703. Use of armories and equipment. The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government, for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

History: En. 77-2203 by Sec. 68, Ch. 94, L. 1974; R.C.M. 1947, 77-2203.

Cross-References

Armories, 10-1-108.
Lease of real property for military facilities, 10-1-109.

10-1-704. Pay and allowances. An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under 10-1-502.

History: En. 77-2204 by Sec. 69, Ch. 94, L. 1974; R.C.M. 1947, 77-2204; amd. Sec. 3, Ch. 430, L. 1983.

Part 8
National Guard Reenlistment or Extension Incentive

10-1-801. Short title. This part may be cited as the "Montana National Guard Reenlistment or Extension Act of 1981".

History: En. Sec. 1, Ch. 506, L. 1981.

10-1-802. Purpose. This part is intended to encourage a greater number of extensions and reenlistments in the Montana national guard, which is the state's only source of organized manpower in times of emergency.

History: En. Sec. 2, Ch. 506, L. 1981.

10-1-803. Definitions. As used in this part, the following definitions apply:

(1) "Bonus" means the extension or reenlistment incentive bonus provided by this part.

(2) "Extension" means the continuation of active national guard service with the Montana national guard.

(3) "Member" means any enlisted member of the Montana army or air national guard.

(4) "Reenlistment" means a second or subsequent voluntary enrollment in the Montana national guard.

(5) "Secretary" means a designee of the department of military affairs.

History: En. Sec. 3, Ch. 506, L. 1981.

10-1-804. Bonus. A member is entitled to receive a bonus payment for each year of service for which the member extends or reenlists. The bonus must be paid to each eligible member within 60 days following the successful completion of a year of service for which the member extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose.

History: En. Sec. 4, Ch. 506, L. 1981; amd. Sec. 9, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-1-805. Eligibility. The bonus must be granted to a person who:

(1) extends the person's original enlistment or reenlists in the Montana national guard;

(2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;

(3) does not have 20 years of total service;

(4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;

(5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by this part; and

(6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid.

History: En. Sec. 5, Ch. 506, L. 1981; amd. Sec. 10, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

10-1-806. Administration. (1) The secretary shall administer this part. The secretary shall maintain records and make rules necessary for its administration.

(2) The secretary shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility.

History: En. Sec. 6, Ch. 506, L. 1981; amd. Sec. 11, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Notice and opportunity to be heard — exceptions, 2-3-102.
Montana Administrative Procedure Act — definitions, 2-4-102.

Part 9
Montana National Guard Civil Relief

10-1-901. Short title. This part may be cited as the "Montana National Guard Civil Relief Act".

History: En. Sec. 1, Ch. 222, L. 2003.

10-1-902. Definitions. As used in this part, the following definitions apply:

(1) "Active duty" means at least 14 consecutive days of full-time state active duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution or of full-time national guard duty, as defined in 32 U.S.C. 101.

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty.

History: En. Sec. 2, Ch. 222, L. 2003; amd. Sec. 1, Ch. 534, L. 2005.

10-1-903. Relief from actions related to mortgage, lease, or rental payments. (1) A civil action, as described in Title 25, chapter 1, part 1, against a service member or a service member's dependent with respect to the member's or dependent's primary residence for nonpayment on a mortgage, lease, or rental agreement may be stayed by a court, or the payments due may be adjusted.

(2) With respect to an action described in subsection (1), upon application or by its own action, a court may do one or more of the following:

(a) stay the action for up to 3 months unless, in the opinion of the court, the ability of the service member or the service member's dependent to make the required payments is not materially affected by the service member's active duty; or

(b) adjust the mortgage, lease, or rental payment to be made by an amount the court determines to be reasonable, taking into consideration the service member's active duty status; or

(c) order the service member or the service member's dependent to pay an amount specified by the court over the time period specified by the court upon the service member's release from active duty.

History: En. Sec. 3, Ch. 222, L. 2003.

10-1-904. General relief from court actions. If a plaintiff or a defendant in any civil action, as described in Title 25, chapter 1, part 1, is a service member, the court may stay the proceedings if the service member or other person on the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the service member to pursue an action as a plaintiff or to conduct the defense as a defendant is not materially affected by the service member's military service.

History: En. Sec. 4, Ch. 222, L. 2003.

Part 10
Montana Military Service Employment Rights

10-1-1001. Short title. This part may be cited as the "Montana Military Service Employment Rights Act".

History: En. Sec. 1, Ch. 381, L. 2005.

10-1-1002. Purpose — legislative intent. The purpose of this part is to recognize the importance of the service performed by Montana national guard members and to protect the employment rights of national guard members who may be called to state active duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and intends that this part will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues.

History: En. Sec. 2, Ch. 381, L. 2005.

10-1-1003. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Department" means the department of labor and industry established in 2-15-1701.

(2) "Elected official" means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) "Employer" means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) "Federally funded military duty" means duty, including training, performed pursuant to orders issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed physician's certification to recover from an illness or injury incurred while performing the duty.

(5) "Member" means a member of the state's organized militia provided for in 10-1-103.

(6) "Military service" includes both federally funded military duty and state active duty.

(7) (a) "State active duty" means duty performed by a member when a disaster or an emergency has been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution to include the time period, if any, required pursuant to a licensed physician's certification to recover from an illness or injury incurred while performing the active duty.

(b) The term does not include federally funded military duty.

History: En. Sec. 3, Ch. 381, L. 2005.

10-1-1004. Rights under federal law. A person ordered to federally funded military duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq., and other applicable federal law.

History: En. Sec. 4, Ch. 381, L. 2005.

10-1-1005. Prohibition against employment discrimination. An employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate against, or threaten negative consequences against a person with regard to employment because of the person's membership, application for membership, or potential application for membership in the state organized militia or because the person may exercise or has exercised a right or may claim or has claimed a benefit under this part.

History: En. Sec. 5, Ch. 381, L. 2005.

10-1-1006. Entitlement to leave of absence. (1) A member ordered to state active duty is entitled to a leave of absence from the person's employment during the period of that state active duty.

(2) A leave of absence for state active duty may not be deducted from any sick leave, vacation leave, military leave, or other leave accrued by the member unless the member desires the deduction.

History: En. Sec. 6, Ch. 381, L. 2005.

10-1-1007. Right to return to employment without loss of benefits — exceptions — definition. (1) Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state active duty.

(2) (a) If a member was a probationary employee when ordered to state active duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state active duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state active duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state active duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state active duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii).

(ii) If a member's state active duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state active duty is not required to cover any illness or injury caused or aggravated by state active duty.

(iv) If the member is a state employee prior to being ordered to state active duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state active duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state active duty:

(i) the member's period of state active duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state active duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state active duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state active duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state active duty; and

(iii) for state active duty of more than 180 days, the member returned to employment within 90 days of termination of the state active duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202.

History: En. Sec. 7, Ch. 381, L. 2005.

10-1-1008. Leave of absence for elected officials — restoration to office. (1) If an elected official is ordered to military service, the official is entitled to a leave of absence for the duration of the military service.

(2) An elected official's leave of absence pursuant to this section does not create a vacancy in office or require the official to forfeit the office.

(3) If an acting official is appointed pursuant to 10-1-1010, the leave of absence must be without pay.

(4) An elected official ordered to military service is entitled to the employment rights and benefits that would be provided to any other employee under the official's employer if the employee were on a leave of absence subject to the provisions of this part.

(5) Upon returning from a leave of absence for military service, if an acting official was appointed pursuant to 10-1-1010, the returning elected official is entitled to be restored to office for the official's unexpired term immediately upon the official's request after being released from the military service.

History: En. Sec. 8, Ch. 381, L. 2005.

10-1-1009. Paid military leave for public employees. (1) An employee of the state or of any political subdivision, as defined in 2-9-101, who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate of 120 hours in a calendar year, or academic year if applicable, for performing military service.

(2) Military leave may not be charged against the employee's annual vacation time.

(3) Unused military leave must be carried over to the next calendar year, or academic year if applicable, but may not exceed a total of 240 hours in any calendar or academic year.

History: **En. 77-2104 by Sec. 61, Ch. 94, L. 1974; R.C.M. 1947, 77-2104; amd. Sec. 1, Ch. 80, L. 1991; amd. Sec. 22, Ch. 381, L. 2005; Sec. 10-1-604, MCA 2003; redes. 10-1-1009 by Sec. 28, Ch. 381, L. 2005; amd. Sec. 1, Ch. 261, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 261 in (1) at beginning deleted "A state, city, town, or county", after "employee" inserted "of the state or any political subdivision as defined in 2-9-101", near end substituted "120 hours" for "15 working days", and after "calendar year" inserted "or academic year if applicable"; in (3) near middle after "calendar year" inserted "or academic year if applicable", substituted "240 hours" for "30 days", and near end after "calendar" inserted "or academic"; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Officer not required to vacate civil office, 10-1-208.
Reemployment of veterans, 10-2-211.
Criminal responsibility of corporations, 45-2-311.

10-1-1010. Appointment of acting officials. (1) When an elected official is ordered to military service, an acting official must be appointed as provided in this section if:

(a) the elected official is precluded pursuant to federal law from performing the official duties of the office; or

(b) the elected official requests the appointment of an acting official.

(2) If an acting official is appointed, the acting official shall take any oath of office required to assume the office, shall exercise all the rights, powers, and duties vested in the office, and must be provided with all the employment rights and benefits associated with the position until the elected official is restored to office pursuant to 10-1-1008(5) or the elected official's term expires, whichever occurs first.

(3) (a) The governor shall appoint the acting official for any office elected by the state at large and for the office of district judge, public service commissioner, or any other elected regional or district office of the state.

(b) An acting official for a legislative district must be appointed using the procedures in 5-2-402.

(c) The board of county commissioners shall appoint the acting official for any elected office of a county.

(d) The city or town council shall appoint the acting official for any elected office of a city or town.

(4) For any elected office not covered under subsection (3), the governing body shall determine the method by which an acting official may be appointed pursuant to this section.

(5) An appointment of an acting official pursuant to this section must be made for a period not to exceed the unexpired term for the office and subject to the right of the elected official to be restored to the office upon returning from the military service, as provided in 10-1-1008(5).

History: **En. Sec. 9, Ch. 381, L. 2005.**

10-1-1011 through 10-1-1014 reserved.

10-1-1015. Procedure for filing complaint. (1) A person entitled to rights or benefits under this part and who claims that an employer has failed or is about to fail to comply with the provisions of this part may file a complaint with the department as provided in this section.

(2) A complaint under this section must be:

(a) filed within 15 days after the member discovered the actions or practice alleged to constitute an employer's failure or imminent failure to comply with the provisions of this part; and

(b) submitted in writing to the department in a manner prescribed by the department.

(3) The department shall, upon request, provide technical assistance to a person wishing to file a complaint pursuant to this section.

History: **En. Sec. 10, Ch. 381, L. 2005.**

10-1-1016. Assistance, investigation, and enforcement of complaints. (1) The department shall provide assistance to any person with respect to the employment rights and benefits to which the person is entitled pursuant to this part. The department may request the assistance of federal or state agencies engaged in similar or related activities and utilize the assistance of volunteers.

(2) The department shall investigate each complaint submitted pursuant to 10-1-1015. The department shall initiate the investigation within 30 days of receiving the complaint. Within 60

days of receiving the complaint, the department shall make a finding about whether a violation of rights or benefits provided in this part has occurred or is about to occur and shall notify the complainant and the employer in writing of the finding.

(3) If the department's investigation finds that a violation of this part has occurred or is about to occur, the department shall attempt to resolve the matter by making a reasonable effort, including conference, conciliation, and persuasion, to provide redress to the complainant and ensure that the employer named in the complaint complies with the provisions of this part.

(4) If the department fails to resolve the matter within 90 days of receiving the complaint, the department shall notify the complainant of the complainant's right to request that the department refer the complaint to the state attorney general under the provisions of 10-1-1018.

History: En. Sec. 11, Ch. 381, L. 2005.

10-1-1017. Enforcement and investigative powers of department. To carry out its enforcement and investigative duties under this part, the department has the power to:

(1) enter and inspect the places, question the employees, and investigate the facts, conditions, or matters that the department considers appropriate to determine whether an employer has violated or is about to violate the provisions of this part or that will aid the department in the enforcement of the provisions of this part; and

(2) administer oaths, examine witnesses, issue subpoenas, compel the attendance of witnesses, inspect papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits relevant to the department's duties under this part.

History: En. Sec. 12, Ch. 381, L. 2005.

10-1-1018. Referral of complaint to state attorney general. (1) A complaint that could not be successfully resolved pursuant to 10-1-1016 must be referred by the department to the state attorney general if the complainant requests the referral pursuant to 10-1-1016(4).

(2) (a) Except as provided in subsection (2)(b), if the state attorney general is satisfied that the complaint has merit, the state attorney general may file a lawsuit on behalf of and act as an attorney for the complainant in seeking relief for the complainant.

(b) (i) Except as provided in subsection (2)(b)(ii), if the complaint is against a state agency, as defined in 2-15-102, notwithstanding an arrangement for the provision of legal services to the agency by the department of justice, the agency shall provide or obtain counsel for the agency.

(ii) If the complaint is against the department of justice, the department of administration, notwithstanding an arrangement for the provision of legal services to the department of administration by the department of justice, shall provide or obtain counsel for the department of justice.

(3) If the state attorney general sues pursuant to this section, fees or court costs may not be assessed against the complainant.

History: En. Sec. 13, Ch. 381, L. 2005.

10-1-1019. Independent lawsuit not precluded — exhaustion of administrative remedies. Nothing in this part may be construed as infringing on a person's right to file an independent lawsuit to seek relief as a private party from an alleged violation of this part. However, if a person files a complaint with the department as provided in 10-1-1015, the person must have exhausted the administrative remedies available under 10-1-1016 before having standing to initiate an independent lawsuit.

History: En. Sec. 14, Ch. 381, L. 2005.

10-1-1020. Jurisdiction — venue — standing — respondent — time limit — expedited hearing. In any lawsuit initiated pursuant to this part:

(1) the lawsuit must be brought in the district court in the county in which the claimant's employer maintains a place of business;

(2) the lawsuit may be initiated only by a person claiming a right or benefit under this part or by the state attorney general as provided in 10-1-1018;

(3) only an employer may be a necessary party respondent;

(4) the lawsuit must be commenced within 3 years of when the claimant can reasonably be expected to have discovered the facts constituting a violation of the claimant's rights or benefits pursuant to this part; and

(5) the court shall order a speedy hearing and shall advance the case on the court's calendar.

History: **En. Sec. 15, Ch. 381, L. 2005.**

10-1-1021. Court remedies. (1) In a lawsuit initiated pursuant to this part, the court may provide one or more of the following remedies:

(a) require the employer to comply with the provisions of this part;

(b) require the employer to compensate the complainant for losses suffered by the complainant because of the employer's violation; or

(c) if the court finds that the employer's violation was done willfully, as defined in 1-1-204, require the employer to pay compensation under subsection (1)(b) as liquidated damages.

(2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the complainant.

(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under this part.

History: **En. Sec. 16, Ch. 381, L. 2005.**

10-1-1022. Special revenue account for payment to claimants. (1) There is an account in the state special revenue fund to the credit of the department of justice for the payment of compensation awarded by a court pursuant to 10-1-1021.

(2) In a lawsuit by the state attorney general under 10-1-1018, if paid compensation or liquidated damages are awarded, the money awarded must be deposited in the state special revenue account and be paid from the account directly to the complainant on order of the state attorney general.

(3) If payment cannot be made to a complainant within 3 years, the payment must be forwarded to the Montana department of revenue and classified as unclaimed property subject to the provisions of Title 70, chapter 9, part 8.

History: **En. Sec. 17, Ch. 381, L. 2005.**

10-1-1023 through 10-1-1026 reserved.

10-1-1027. Rulemaking authority. The department and the department of justice may adopt rules to implement the provisions of this part.

History: **En. Sec. 18, Ch. 381, L. 2005.**

Part 11
National Guard Life Insurance Reimbursement

10-1-1101. Terminated. Sec. 9, Ch. 604, L. 2005.

History: **En. Sec. 1, Ch. 604, L. 2005.**

10-1-1102. Terminated. Sec. 9, Ch. 604, L. 2005.

History: **En. Sec. 2, Ch. 604, L. 2005.**

10-1-1103. Terminated. Sec. 9, Ch. 604, L. 2005.

History: **En. Sec. 3, Ch. 604, L. 2005.**

10-1-1104. Terminated. Sec. 9, Ch. 604, L. 2005.

History: **En. Sec. 4, Ch. 604, L. 2005.**

10-1-1105 through 10-1-1110 reserved.

10-1-1111. Legislative findings — purpose. (1) The legislature finds that:

(a) Montana has a proud tradition of military service with thousands of Montanans having answered the call of the nation and having served in the national guard, reserve, and armed forces;

(b) there have been instances in which the dependents of members of the Montana national guard, reserve, and armed forces have been left without adequate financial resources when a service member has been killed while on active duty;

(c) members of the Montana national guard, reserve, and armed forces are now being asked to serve extended periods of active duty in support of contingency operations;

(d) members of the Montana national guard, reserve, and armed forces are eligible for life insurance policies with limits of up to $400,000 through the federal service members' group life insurance program; and

(e) members of the Montana national guard, reserve, and armed forces provide Montana and its citizens with valuable benefits through the members' service inside this state and through the members' recently extended periods of active duty in combat areas outside of Montana, and in exchange for these extended periods of active duty they should receive assistance with the premiums that members pay for the federal service members' group life insurance program.

(2) The purpose of creating and funding the account established in 10-1-1113 is to provide a benefit to members of the Montana national guard, reserve, and armed forces in exchange for and in recognition of the members' assumption of extended periods of active duty in a contingency operation, in addition to the members' increased contributions to the safety and welfare of the citizens of Montana.

History: En. Sec. 1, Ch. 373, L. 2007.

10-1-1112. Definitions. As used in 10-1-1111 through 10-1-1114, unless the context requires otherwise, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 U.S.C. 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "National guard" has the meaning provided in 10-1-101.

(4) "Reserve" means a member of a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces.

(5) "Service member" means a Montana resident who is a member of the national guard or reserve or a member of the armed forces, as defined in 10 U.S.C. 101(a)(4).

History: En. Sec. 2, Ch. 373, L. 2007.

10-1-1113. Account for service members' life insurance. (1) There is an account in the state treasury that is composed of statutory deposits to the account and includes any gifts, grants, donations, or bequests to the account and earnings from investing the money in the account.

(2) Money in the account must be used, as provided in 10-1-1114, to reimburse service members serving on active duty in a contingency operation for the premiums paid, if any, for service members' group life insurance.

History: En. Sec. 3, Ch. 373, L. 2007.

10-1-1114. Military service members' life insurance — reimbursement — eligibility. (1) (a) Subject to subsections (1)(b) and (1)(c), the department shall reimburse eligible service members for premiums paid for benefits under the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980.

(b) A service member is eligible for reimbursement of group life insurance premiums only if the service member:

(i) paid premiums for service members' life insurance available under 38 U.S.C. 1965 through 1980 after February 28, 2006;

(ii) served on active duty in a contingency operation after February 28, 2006; and

(iii) was not reimbursed for premiums paid under subsection (1)(b)(i).

(c) The maximum amount of premium to be reimbursed may not exceed $17.50 a month for each month during which the member was on active duty in a contingency operation and purchased service members' group life insurance pursuant to 38 U.S.C. 1965 through 1980.

(2) The amount received by a service member as reimbursement for group life insurance premiums paid is considered to be a bonus for the purposes of taxation.

(3) The department shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement account and to implement the reimbursement program.

(4) This section does not alter, amend, or change the eligibility or applicability of the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980 or any rights, responsibilities, or benefits under the program.

History: En. Sec. 4, Ch. 373, L. 2007.

Part 12
Active Duty Death Benefit

10-1-1201. Death while on state duty — death benefit payment — certification — rules. (1) The department of administration shall, upon certification by the department as provided in subsection (2), make a death benefit payment by state warrant in the amount of $50,000 to the beneficiary, as provided in subsection (3), of a member of the national guard who dies in the line of duty performed pursuant to state active duty orders.

(2) Upon the death of the member, the department shall certify to the department of administration:

(a) the name and other identifying information of the member;

(b) that the member died in the line of duty performed pursuant to Article VI, section 13, of the Montana constitution;

(c) that, at the time of the death of the member, the member was being paid or was to be paid for the member's military service from state and not federal military funds; and

(d) the name and address of the beneficiary, as provided in subsection (3), to whom payment must be made.

(3) The department of administration shall pay the death benefit to the member's surviving spouse. If there is no surviving spouse, the department of administration shall pay the death benefit to the member's surviving children in equal shares. If there are no surviving children, the department of administration shall pay the death benefit to the member's survivors pursuant to Title 72 as if the member had died intestate.

(4) The department and the department of administration may adopt rules to implement this section.

History: En. Sec. 1, Ch. 308, L. 2007.

10-1-1202. Statutory appropriation. The payment to a beneficiary certified pursuant to 10-1-1201 is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of administration.

History: En. Sec. 4, Ch. 308, L. 2007.

Part 13
Montana Military Family Relief Fund Act

10-1-1301. Short title. This part may be cited as the "Montana Military Family Relief Fund Act".

History: En. Sec. 1, Ch. 311, L. 2007.

10-1-1302. Montana military family relief fund — purpose — administration. (1) There is a Montana military family relief fund.

(2) The purpose of the fund is to aid members of the Montana national guard or reserve component who have been activated for federal service in a contingency operation and the families of members.

(3) The department shall administer the fund as provided in this part.

History: En. Sec. 2, Ch. 311, L. 2007.

10-1-1303. Fund account — statutory appropriation. (1) There is a Montana military family relief fund account in the state special revenue fund provided for in 17-2-102. All money transferred to the fund by the legislature, all monetary contributions, gifts, and grants donated to the fund, all contributions made to the fund pursuant to 15-30-2392, and all interest and income earned on money in the account must be deposited into the account.

(2) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this part.

History: En. Sec. 3, Ch. 311, L. 2007.

10-1-1304. Definitions. As used in this part, the following definitions apply:

(1) "Account" means the Montana military family relief fund account established in 10-1-1303.

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "Family member" means a person who has been approved as a dependent of a member and is enrolled as a dependent of the member in the defense enrollment eligibility reporting system of the United States department of defense.

(4) "Fund" means the Montana military family relief fund established in 10-1-1302.

(5) "Member" means a Montana resident who is a member of the Montana national guard or reserve component, as defined in 38 U.S.C. 101, and who on or after July 1, 2007, is on active duty for federal service in a contingency operation.

History: En. Sec. 4, Ch. 311, L. 2007.

10-1-1305. Allowable uses of account. Subject to the availability of money in the account and 10-1-1306, the department shall use the money in the account to make the following grants to members and to family members:

(1) a status-based grant of $250 to each family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days;

(2) a needs-based grant of not more than $2,000 to a member or to a family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days and:

(a) the member's monthly military pay and allowances, combined, are at least 30% less than the member's monthly civilian wages or salary; or

(b) the member or a family member is experiencing a significant emergency that warrants financial assistance; and

(3) a casualty-based grant of $2,000 to a member who at any time after activation for federal service in a contingency operation sustained a nonfatal injury in the course of or related to combat as a direct result of hostile action. A member may receive only one casualty-based grant for injuries sustained during or arising out of the same contingency operation.

History: En. Sec. 5, Ch. 311, L. 2007.

10-1-1306. Ineligibility for grants. (1) (a) A member who at any time prior to the disbursement of grant money receives a punitive discharge pursuant to the federal Manual for Courts-Martial or an administrative discharge with service characterized as other than honorable conditions is ineligible for any grant under 10-1-1305.

(b) A family member of a member described in subsection (1)(a) is ineligible for any grant under 10-1-1305.

(2) (a) A member and a family member of the member are ineligible for status-based and needs-based grants under 10-1-1305 if the member holds a rank or pay grade, as those terms are used in Titles 10 and 37 of the United States Code, of:

(i) 0-4 (major or lieutenant commander) or higher if a commissioned officer; or

(ii) W-4 (chief warrant officer, W-4) or higher if a warrant officer.

(b) The determination of the member's pay grade must be made at the time of application for the grant.

(3) A member is ineligible for a casualty-based grant under 10-1-1305 if:

(a) the member's injury is the result of a self-inflicted wound, willful negligence by the member, or other misconduct by the member; or

(b) the injury occurs when the member is not in an authorized duty status.

History: En. Sec. 6, Ch. 311, L. 2007.

10-1-1307. Rules. The department shall adopt rules pursuant to 10-1-105 to implement and administer the provisions of this part. The rules must ensure that all similarly situated members and family members are treated equitably and must include but are not limited to provisions regarding:

(1) applications;

(2) timelines;

(3) eligibility, including proof of eligibility of members and family members;

(4) the procedure for establishing the priority of grant awards if the amount of money available in the account is insufficient to support an award of grants to the maximum authority allowed under 10-1-1305;

(5) the appeal process for grant applications that are denied; and

(6) disbursement of grant money to members and family members.

History: En. Sec. 7, Ch. 311, L. 2007.

10-1-1308. Grant application — review — approval or denial. (1) A member or a family member may apply for a grant authorized under 10-1-1305 on forms provided by and in the manner prescribed by the department.

(2) (a) A committee of three members shall review all applications for needs-based grants and shall recommend to the adjutant general approval or denial of each application.

(b) The committee is composed of the director of the department of public health and human services provided for in 2-15-2201 or the director's designee, the commissioner of labor and industry provided for in 2-15-1701 or the commissioner's designee, and the budget director provided for in 17-7-103 or the budget director's designee.

(3) The adjutant general shall review all grant applications and the recommendations of the committee made under subsection (2) and shall either approve or deny each application pursuant to the rules adopted under 10-1-1307.

(4) The department shall notify the applicant in writing as to whether the applicant's application for a grant is approved or denied.

History: En. Sec. 8, Ch. 311, L. 2007.

10-1-1309. Review if application denied. (1) If the adjutant general denies an application for a grant, the adjutant general shall explain the basis for the denial to the applicant in writing.

(2) An applicant whose application is denied may appeal the decision in writing to the adjutant general in the manner prescribed by rule. After considering the applicant's appeal, the adjutant general shall affirm or deny the appeal in writing.

(3) There is no further appeal if the adjutant general denies the appeal.

History: En. Sec. 9, Ch. 311, L. 2007.

10-1-1310. Contributions to fund. The department may accept monetary contributions, gifts, or grants to the fund. Upon receipt, monetary contributions, gifts, and grants must be deposited into the account.

History: En. Sec. 10, Ch. 311, L. 2007.

Part 14
National Guard Youth Challenge Program

10-1-1401. Montana national guard youth challenge program authorized. A youth challenge program provided for pursuant to 32 U.S.C. 509 may be established in the department.

History: En. Sec. 2, Ch. 347, L. 2007.

10-1-1402. Legislative intent. It is the intent of the legislature that:

(1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;

(2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;

(3) eligible participants be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;

(4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;

(5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for general educational development, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and

(6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth.

History: En. Sec. 3, Ch. 347, L. 2007.

10-1-1403. Administration and staff. Subject to 32 U.S.C. 509 and its implementing regulations and applicable agreements, the youth challenge program may be staffed by an administrator and the professional, technical, secretarial, and clerical employees necessary for the performance of the youth challenge program's functions.

History: **En. Sec. 4, Ch. 347, L. 2007.**

CHAPTER 2
VETERANS

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Part 7 — First Special Service Force Memorial Trust

10-2-701. Short title.
10-2-702. Procedure for appointment of corporate trustee — term of office — annual reporting requirement — discharge for good cause.
10-2-703. Principal of trust fund inviolate — investment — use of income — corporate trustee compensation — surplus.

Chapter Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Taxes — property exemption, 15-6-211.
"Agent orange" payments — income tax exemption, 15-30-2110.
Teachers' retirement system — service credits, 19-20-404.
Raffles — nonprofit groups exempt from permit or investigative fees, 23-5-413.
Benefits not exempt from execution when debt is for child support, 25-13-608.
Veterans' public employment preference, Title 39, ch. 29.
Parking privilege for disabled veteran, 49-4-302.
Special parking and vehicle licensing privileges, Title 61, ch. 3, parts 4 and 5.
Special fishing permits, 87-2-802.
Housing developments, 90-6-104.

Part 1
Board of Veterans' Affairs

Part Cross-References

Board of Veterans' Affairs created, 2-15-1205.

10-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterans' affairs provided for in 2-15-1205.

(2) "Veteran" means an honorably discharged individual who served on active duty, other than for training, with the United States armed forces, including an individual who served with the United States coast guard. The term includes individuals who served with the first special service force and the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

History: En. Sec. 36, Ch. 121, L. 1974; R.C.M. 1947, 71-2201; amd. Sec. 3, Ch. 271, L. 1983; amd. Sec. 1, Ch. 609, L. 1989; amd. Sec. 1, Ch. 70, L. 1991.

10-2-102. Duties of board — employee qualifications. (1) The board shall establish a statewide service for veterans and their families as provided in this section. The board shall:

(a) actively cooperate with local, state, and federal agencies whose services encompass the affairs of veterans and their families;

(b) promote the general welfare of all veterans and their families;

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) information to assist veterans and their family members in obtaining federal benefits and treatment services related to depleted uranium exposure, including a best practice health screening of any veteran who:

(A) has been identified pursuant to department of defense policy as having possible level I, II, or III exposure to depleted uranium;

(B) is referred for a health screening by a military physician; or

(C) may have been exposed to depleted uranium during service in a combat zone.

(iv) an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

(v) a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in 10-2-112 and 10-2-603, and a review of the veterans' affairs budget.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, the Vietnam conflict, or other period of conflict involving the United States military overseas and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971; Sec. 77-1002, R.C.M. 1947; amd. and redes. by Sec. 37, Ch. 121, L. 1974; amd. Sec. 39, Ch. 535, L. 1975; R.C.M. 1947, 71-2202; amd. Sec. 11, Ch. 7, L. 2001; amd. Sec. 2, Ch. 491, L. 2003; amd. Sec. 1, Ch. 181, L. 2007.

Cross-References

Rules for determining residence, 1-1-215.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

10-2-103. Seal — acknowledgments — officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments and depositions and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a presiding officer, a vice presiding officer, and a secretary.

History: En. Sec. 5, Ch. 111, L. 1945; Sec. 77-1005, R.C.M. 1947; amd. and redes. by Sec. 38, Ch. 121, L. 1974; R.C.M. 1947, 71-2203; amd. Sec. 12, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

10-2-104. Aid by state, county, and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945; Sec. 77-1006, R.C.M. 1947; amd. and redes. by Sec. 39, Ch. 121, L. 1974; R.C.M. 1947, 71-2204.

10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or the veteran's dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945; Sec. 77-1007, R.C.M. 1947; amd. and redes. by Sec. 40, Ch. 121, L. 1974; R.C.M. 1947, 71-2205; amd. Sec. 13, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

10-2-106. Acceptance of federal funds or other funds. (1) The board may accept from the federal government or any of its agencies any funds made available to carry out the activities and purposes of the board as identified in 10-2-102. Federal funds must be deposited in the veterans' services federal account established in 10-2-112(4).

(2) The board may accept gifts, grants, or donations from other public or private sources, which must be used within the scope of activities and purposes identified in 10-2-102 or as otherwise authorized by the board.

(3) Gifts, grants, or donations must be deposited in the veterans' services account established in 10-2-112(1) unless specifically assigned by the donor to the special revenue account for state veterans' cemeteries established in 10-2-603.

History: En. Sec. 1, Ch. 256, L. 1947; Sec. 77-1009, R.C.M. 1947; amd. and redes. by Sec. 41, Ch. 121, L. 1974; R.C.M. 1947, 71-2206; amd. Sec. 7, Ch. 491, L. 2003.

10-2-107. Contracts for federal reimbursement funds. The governor of this state and the presiding officer and secretary of the board may sign contracts with the federal government or any agency of the federal government for the reimbursement of the board for any work that the board may do for which any federal statute provides reimbursement to the states.

History: En. Sec. 2, Ch. 256, L. 1947; Sec. 77-1010, R.C.M. 1947; amd. and redes. by Sec. 42, Ch. 121, L. 1974; R.C.M. 1947, 71-2207; amd. Sec. 14, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-2-108 through 10-2-110 reserved.

10-2-111. Disposal of unclaimed veterans' remains — limits on liability of mortuaries and veterans' service organizations — notice — definitions. (1) A mortuary is not liable for simple negligence in the disposition of the human remains or cremated remains of a veteran to a veterans' service organization for the purposes of interment by that organization if:

(a) the remains have been in the possession of the mortuary for a period of at least 20 years, all or any part of which period may occur or may have occurred before or after October 1, 2001;

(b) the mortuary has given notice, as provided in subsection (2)(a) or (2)(b), to the veteran's next of kin of the matters provided in subsection (3); and

(c) the remains have not been claimed by the next of kin of the veteran within the period of time provided for in subsection (3) following notice to the next of kin.

(2) In order for the immunity provided in subsection (1) to apply, a mortuary shall take the following action, alone or in conjunction with a veterans' service organization, to provide notice to the next of kin of the deceased veteran:

(a) give written notice by mail to the next of kin of the veteran for whom the address of the next of kin is known or can reasonably be ascertained by the mortuary giving the notice; or

(b) if the address of the next of kin is not known or cannot reasonably be ascertained, give notice to the next of kin by publication once each week for 3 successive weeks in a newspaper of general circulation:

(i) in the county of the veteran's residence; or

(ii) if the residence of the veteran is unknown, in the county in which the veteran died; or

(iii) if the county in which the veteran died is unknown, in the county in which the mortuary giving notice is located.

(3) The notice required by subsection (2) must include a statement to the effect that the remains of the veteran must be claimed by the veteran's next of kin within 30 days after the date of mailing of the written notice provided for in subsection (2)(a) or within 4 months of the date of the first publication of the notice provided for in subsection (2)(b), as applicable, and that if the remains are not claimed, the remains may be given to a veterans' service organization for interment.

(4) A veterans' service organization receiving human remains or cremated remains of a veteran from a mortuary for the purposes of interment is not liable for simple negligence in the custody or interment of the remains if the veterans' service organization inters and does not scatter the remains and does not know and has no reason to know that the remains do not satisfy the requirements of subsection (1)(a) or (1)(c) or that the mortuary has not complied with the notice requirements of subsection (2)(a) or (2)(b), as applicable.

(5) By accepting the remains of a veteran for interment, a veterans' service organization does not agree to pay storage or other charges applied by the mortuary for the keeping or preservation of the remains.

(6) A veterans' service organization accepting remains pursuant to this section shall take all reasonable steps to inter the remains in a veterans' cemetery. However, the organization is not liable for any additional expense for interment in a veterans' cemetery and interment in a veterans' cemetery is not a condition for immunity under this section.

(7) (a) As used in this section, the following definitions apply:

(i) "Mortuary" includes a mortuary as defined in 37-19-101, a funeral home, a funeral director, a mortician, an undertaker, or an employee of any of the individuals or entities.

(ii) "Veterans' service organization" means an association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States congress, including the disabled American veterans, veterans of foreign wars, the American legion, the legion of honor, and the Vietnam veterans of America. The term includes a member or employee of any of those associations or entities.

(b) Terms not defined in this subsection (7) have the meaning given them in 37-19-101.

History: En. Sec. 1, Ch. 202, L. 2001.

10-2-112. Veterans' services special revenue account — sources of funds — designated uses. (1) There is a veterans' services account in the state special revenue fund, established pursuant to 17-2-102(1)(b), to the credit of the board.

(2) Money transferred pursuant to 15-1-122(2)(d) from license plate sales as described in 10-2-114 and from gifts, grants, or donations must be deposited in the veterans' services account.

(3) Legislative appropriations of money in the veterans' services account must be used for the purposes identified in 10-2-102 or other functions authorized by the board.

(4) There is a veterans' services federal account in the federal special revenue fund established for federal funds received under 10-2-106.

History: En. Sec. 3, Ch. 491, L. 2003; amd. Sec. 1, Ch. 542, L. 2005; amd. Sec. 3, Ch. 486, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 486 in (2) after "pursuant to" substituted "15-1-122(2)(d)" for "15-1-122(3)(d)". Amendment effective July 1, 2009.

10-2-113. Rulemaking authority. The board shall adopt rules in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4, to implement the provisions of this part.

History: En. Sec. 4, Ch. 491, L. 2003.

10-2-114. Patriotic license plates — surcharge — disposition. (1) Subject to 61-3-472 through 61-3-481 and this section, the board may sponsor a generic specialty license plate designed as a patriotic salute to Montana's military veterans.

(2) A Montana resident may purchase patriotic plates for a $15 surcharge to be paid for each original set of plates and each renewal. The surcharge is in addition to the one-time administrative fee charged pursuant to 61-3-480(1).

(3) The surcharge collected pursuant to this section must be remitted as provided in 61-3-480 and deposited to the veterans' services account established in 10-2-112(1).

History: En. Sec. 5, Ch. 491, L. 2003.

10-2-115. County veterans' service officers. A county may, with the advice of the board, provide for a county veterans' service officer to assist veterans and their families in filing benefit claims. If a county provides for a veterans' service officer under this section, the officer must be trained, accredited, and supervised in accordance with the applicable provisions of 38 CFR 14.629. A county may fund the position as provided for in 15-10-425 or through other means provided by law.

History: En. Sec. 6, Ch. 491, L. 2003.

Part 2
Reemployment on Completion of Service
(Repealed)

10-2-201. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(1).

10-2-202. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(2); amd. Sec. 1, Ch. 142, L. 1979; amd. Sec. 1, Ch. 5, L. 1981.

10-2-203. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(3).

10-2-204. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(4).

10-2-205. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(5).

10-2-206. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(6).

10-2-207 through 10-2-210 reserved.

10-2-211. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 1, Ch. 150, L. 1941; amd. Sec. 1, Ch. 209, L. 1951; R.C.M. 1947, 77-601; amd. Sec. 2, Ch. 142, L. 1979.

10-2-212. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 2, Ch. 150, L. 1941; R.C.M. 1947, 77-602.

10-2-213. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 3, Ch. 150, L. 1941; R.C.M. 1947, 77-603; amd. Sec. 3, Ch. 142, L. 1979.

10-2-214. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 4, Ch. 150, L. 1941; amd. Sec. 5, Ch. 49, L. 1977; R.C.M. 1947, 77-604.

10-2-215 through 10-2-220 reserved.

10-2-221. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 1, Ch. 47, L. 1941; R.C.M. 1947, 77-701; amd. Sec. 4, Ch. 142, L. 1979.

10-2-222. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 2, Ch. 47, L. 1941; R.C.M. 1947, 77-702.

10-2-223. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 3, Ch. 47, L. 1941; R.C.M. 1947, 77-703.

10-2-224. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 5, Ch. 47, L. 1941; R.C.M. 1947, 77-705.

10-2-225. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 4, Ch. 47, L. 1941; R.C.M. 1947, 77-704.

10-2-226. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 6, Ch. 47, L. 1941; R.C.M. 1947, 77-706.

10-2-227. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 7, Ch. 47, L. 1941; amd. Sec. 6, Ch. 49, L. 1977; R.C.M. 1947, 77-707.

10-2-228. Repealed. Sec. 27, Ch. 381, L. 2005.

History: En. Sec. 8, Ch. 47, L. 1941; R.C.M. 1947, 77-708.

Part 3
Veterans' Benefits
(Renumbered and Repealed)

10-2-301. Renumbered 61-3-451. Sec. 7, Ch. 159, L. 1985.

10-2-302. Renumbered 61-3-452. Sec. 7, Ch. 159, L. 1985.

10-2-303. Renumbered 61-3-453. Sec. 7, Ch. 159, L. 1985.

10-2-304. Renumbered 61-3-455. Sec. 7, Ch. 159, L. 1985.

10-2-305 through 10-2-310 reserved.

10-2-311. Repealed. Sec. 3, Ch. 170, L. 1989.

History: En. Sec. 1, Ch. 194, L. 1943; amd. Sec. 1, Ch. 44, L. 1945; Sec. 77-901, R.C.M. 1947; amd. and redes. 75-8611 by Sec. 4, Ch. 94, L. 1974; R.C.M. 1947, 75-8611.

10-2-312. Repealed. Sec. 3, Ch. 170, L. 1989.

History: En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, Ch. 225, L. 1969; amd. Sec. 1, Ch. 64, L. 1974; Sec. 77-909, R.C.M. 1947; amd. and redes. 75-8612 by Sec. 5, Ch. 94, L. 1974; amd. Sec. 3, Ch. 49, L. 1977; R.C.M. 1947, 75-8612; amd. Sec. 5, Ch. 142, L. 1979.

10-2-313. Repealed. Sec. 3, Ch. 170, L. 1989.

History: En. Sec. 2, Ch. 141, L. 1957; Sec. 77-910, R.C.M. 1947; amd. and redes. 75-8613 by Sec. 6, Ch. 94, L. 1974; R.C.M. 1947, 75-8613.

10-2-314. Repealed. Sec. 3, Ch. 170, L. 1989.

History: En. Sec. 3, Ch. 141, L. 1957; Sec. 77-911, R.C.M. 1947; amd. and redes. 75-8614 by Sec. 7, Ch. 94, L. 1974; R.C.M. 1947, 75-8614.

Part 4
Montana Veterans' Homes

Part Cross-References

Constitutional authority for establishment, Art. XII, sec. 3, Mont. Const.

General administration of institutions, Title 53, ch. 1.

Residents subject to per diem and ancillary charges, 53-1-402.

Established within Department of Public Health and Human Services, 53-1-602.

10-2-401. Location and function of homes — persons admitted. The institutions at Columbia Falls, in eastern Montana, and in southwestern Montana are the Montana veterans' homes, and their primary function is to provide a home and subsistence for veterans. The department of public health and human services may also admit spouses or surviving spouses of veterans to the homes if space allows.

History: En. Sec. 20, Ch. 199, L. 1965; amd. Sec. 40, Ch. 535, L. 1975; R.C.M. 1947, 80-1801; amd. Sec. 2, Ch. 609, L. 1989; amd. Sec. 11, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 36, Ch. 546, L. 1995; amd. Sec. 3, Ch. 461, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 461 in first sentence inserted "and in southwestern Montana"; and made minor changes in style. Amendment effective May 6, 2009.

State Veterans' Home in Southwestern Montana: Section 1, Ch. 461, L. 2009, provided: "(1) A southwestern Montana state veterans' home is established at a site determined as provided for in this section.

(2) The governor shall, by June 1, 2009, appoint a site selection committee, which shall select a site in Beaverhead, Deer Lodge, Jefferson, Madison, Powell, or Silver Bow County for the state veterans' nursing home.

(3) (a) The voting membership of the committee consists of six honorably discharged veterans of the United States armed forces. One member must be appointed from each county listed in subsection (2).

(b) Representatives of the state departments of administration, public health and human services, and military affairs shall serve as nonvoting members of the committee.

(4) The committee shall:

(a) establish objective criteria in compliance with federal law and state health requirements for the selection of the most favorable site for a state veterans' home;

(b) solicit proposals from communities interested in becoming the location for the state veterans' home;

(c) organize and conduct public hearings in each of the interested communities for the purpose of gathering input and information; and

(d) prepare and forward its designation of the most favorable location for the state veterans' home to the governor no later than April 1, 2010.

(5) The designation of the site selection committee is binding.

(6) The committee's expenses must be paid by the senior and long-term care division of the department of public health and human services.

(7) The department of administration shall direct the architecture and engineering division to prepare a long-range building plan for the state veterans' home in southwestern Montana pursuant to 17-7-202."

Account — State Veterans' Home in Southwestern Montana: Section 2, Ch. 461, L. 2009, provided: "There is an account in the state special revenue fund established in 17-2-102. The cigarette tax collections allocated in 16-11-119(1)(b) must be deposited in the account. Money deposited in the account is subject to appropriation by the 62nd legislature and may be used only for capital construction of a state veterans' home in southwestern Montana at the site selected pursuant to [section 1]."

10-2-402. Superintendent to be given veterans' preference. In the selection of the superintendent of each of the Montana veterans' homes, the department of public health and human services shall apply the preference granted to veterans and disabled veterans under 39-29-102, but not the preference granted to other persons under 39-29-102 or Title 39, chapter 30.

History: En. Sec. 21, Ch. 199, L. 1965; R.C.M. 1947, 80-1802; amd. Sec. 1, Ch. 119, L. 1981; amd. Sec. 11, Ch. 1, Sp. L. 1983; amd. Sec. 7, Ch. 646, L. 1989; amd. Sec. 12, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 37, Ch. 546, L. 1995.

10-2-403. Eligibility for residence in home. To be eligible for residence in a Montana veterans' home under rules prescribed by the department of public health and human services, a person must be a veteran or the spouse or surviving spouse of a veteran. Consideration must also be given to:

(1) the person's age;
(2) the person's physical and mental status;
(3) the person's ability or inability to locate suitable alternative accommodations;
(4) the person's term of residence in Montana;
(5) the person's gender as it relates to availability of appropriate living space;
(6) the ability of the Montana veterans' home to meet the person's needs; and
(7) other admission requirements established by the department.

History: En. Sec. 22, Ch. 199, L. 1965; amd. Sec. 41, Ch. 535, L. 1975; R.C.M. 1947, 80-1803; amd. Sec. 1, Ch. 469, L. 1983; amd. Sec. 3, Ch. 609, L. 1989; amd. Sec. 13, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 38, Ch. 546, L. 1995.

Cross-References

Rules for determining residence, 1-1-215.

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-2-404. Acceptance and deposit of federal money. The department of public health and human services may accept money from the federal government that becomes available to the state as a result of operating the Montana veterans' homes and shall deposit the money in the state treasury for the benefit of the homes. If a resident of a home is transferred to another institution, the department of public health and human services shall continue to draw from the federal government any money available for the maintenance of the former resident.

History: En. Sec. 23, Ch. 199, L. 1965; R.C.M. 1947, 80-1804; amd. Sec. 14, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 39, Ch. 546, L. 1995.

Cross-References

Federal revenue and endowments, Title 17, ch. 3, part 1.

10-2-405 through 10-2-410 reserved.

10-2-411. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 1, Ch. 683, L. 1989.

10-2-412. Repealed. Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 2, Ch. 683, L. 1989; amd. Sec. 17, Ch. 10, L. 1993.

10-2-413. Repealed. Sec. 85, Ch. 10, L. 1993; sec. 19, Ch. 579, L. 1993.

History: En. Sec. 3, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-414. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 4, Ch. 683, L. 1989.

10-2-415. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 9, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-416. Pledge to continue operation and maintenance. Pursuant to 38 U.S.C. 8134 and 8135(a)(6), the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of public health and human services for financial support necessary to provide for continued operation and maintenance of the state homes for veterans in eastern Montana and southwestern Montana. The department of public health and human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and the southwestern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility.

History: **En. Sec. 10, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 18, Ch. 10, L. 1993; amd. Sec. 2, Ch. 579, L. 1993; amd. Sec. 40, Ch. 546, L. 1995; amd. Sec. 42, Ch. 42, L. 1997; amd. Sec. 4, Ch. 461, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 461 in first sentence near end substituted "state homes" for "state home" and at end inserted "and southwestern Montana" and in second sentence inserted "and the southwestern Montana veterans' home". Amendment effective May 6, 2009.

10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of public health and human services for veterans' homes must be used to support the operation and maintenance of the Montana veterans' homes programs.

(2) The legislature shall appropriate from the account established in 16-11-119(1)(a) the funds required for the operation and maintenance of the Montana veterans' homes.

History: **En. Sec. 2, Ch. 548, L. 1993; amd. Sec. 41, Ch. 546, L. 1995; amd. Sec. 1, I.M. No. 149, approved Nov. 2, 2004; amd. Sec. 1, Ch. 481, L. 2005.**

Part 5
Veterans' Interment

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-501. Interment allowance for veterans — payment by county of residence — veterans' interment supervisor — definitions. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' interment supervisor.

(2) The veterans' interment supervisor shall cause to be decently interred the body or cremated remains of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' interment supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated. The veterans' interment supervisor may not receive any compensation for duties performed in compliance with this part.

(3) The interment may not be made in a burial ground or cemetery or in a portion of a burial ground or cemetery used exclusively for the interment of pauper dead.

(4) A sum not to exceed $250 to defer interment expenses must be paid by the veteran's county of residence.

(5) The interment benefits are not available in the case of a veteran whose personal representative or heirs waive the benefits.

(6) Whenever interment is of a resident of a Montana veterans' home, a sum not to exceed $250 to defer interment expenses must be paid by the veteran's county of residence.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the interment expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) When a veteran dies at an institution of the state of Montana, other than a Montana veterans' home, at a federal institution, or at a private facility and interment for any cause is not made in the veteran's county of residence, the officers of the institution or facility shall provide the proper interment prescribed in this section. The reimbursement for the expense of each interment may not exceed $250. The expense must be paid by the veteran's county of residence.

(9) An interment may not be covered by any special or standing contract under which the cost of interment is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' interment supervisor shall, upon request of the deceased veteran's personal representative or heirs, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. The reimbursement costs for the shipping and raising of the headstone may not exceed an

amount equal to the actual cost paid, up to $70, and must be paid by the veteran's county of residence at the time of death. The expense must be audited and paid as provided in this section for interment expenses.

(11) As used in this part, the following definitions apply:

(a) "Interment" has the meaning provided in 37-19-101.

(b) "Residence" is determined as provided in 13-1-112. If the intent of the veteran regarding residence cannot be determined under 13-1-112, the costs of interment must be paid by the veteran's county of residence at the time of admittance into a Montana veterans' home, a state or federal institution, or a private facility.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R.C.M. 1921; amd. Sec. 1, Ch. 181, L. 1931; re-en. Sec. 4536, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1937; amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967; amd. Sec. 1, Ch. 96, L. 1969; amd. Sec. 34, Ch. 535, L. 1975; amd. Sec. 2, Ch. 49, L. 1977; R.C.M. 1947, 71-120; amd. Sec. 4, Ch. 609, L. 1989; amd. Sec. 2, Ch. 70, L. 1991; amd. Sec. 1, Ch. 45, L. 1995; amd. Sec. 1, Ch. 210, L. 1999; amd. Sec. 4, Ch. 257, L. 2001; amd. Sec. 89, Ch. 574, L. 2001.

Cross-References

Cemetery services, Title 7, ch. 35.

10-2-502. Repealed. Sec. 3, Ch. 210, L. 1999.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R.C.M. 1921; re-en. Sec. 4537, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1967; R.C.M. 1947, 71-121; amd. Sec. 7, Ch. 609, L. 1989.

10-2-503. Report of actions and expenses by veterans' interment supervisor. It is the duty of the person appointed as provided in 10-2-501 to cause the veteran to be interred as provided in this part, and the veterans' interment supervisor shall immediately report the action to the clerk of the board of county commissioners, setting forth all the facts, together with the veteran's name and rank, the last command to which the veteran belonged, so far as is known, the date of death, the exact place of interment, and an itemized statement of the expenses incurred by reason of the interment. The board of county commissioners may direct that additional information be kept in the book required to be kept by the clerk of the board of county commissioners by 10-2-504.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911; re-en. Sec. 4538, R.C.M. 1921; re-en. Sec. 4538, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1967; R.C.M. 1947, 71-122; amd. Sec. 7, Ch. 609, L. 1989; amd. Sec. 3, Ch. 70, L. 1991; amd. Sec. 2, Ch. 210, L. 1999.

10-2-504. Duty of clerk. It is the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses, to transcribe in a book to be kept for that purpose all the facts contained in the report concerning the veteran.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R.C.M. 1921; re-en. Sec. 4539, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1963; amd. Sec. 4, Ch. 310, L. 1967; R.C.M. 1947, 71-123; amd. Sec. 1, Ch. 442, L. 1979; amd. Sec. 7, Ch. 609, L. 1989; amd. Sec. 4, Ch. 70, L. 1991.

10-2-505. Repealed. Sec. 3, Ch. 210, L. 1999.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R.C.M. 1921; re-en. Sec. 4540, R.C.M. 1935; R.C.M. 1947, 71-124.

10-2-506. Not to apply to nonresidents. This part shall not apply to veterans who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. 4541, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1931; re-en. Sec. 4541, R.C.M. 1935; amd. Sec. 5, Ch. 310, L. 1967; R.C.M. 1947, 71-125; amd. Sec. 7, Ch. 609, L. 1989.

Cross-References

Rules for determining residence, 1-1-215.

Part 6
State Veterans' Cemeteries

10-2-601. State veterans' cemeteries. (1) The board shall establish and operate state veterans' cemeteries, except as provided in subsection (4).

(2) A cemetery must be located at Fort William Henry Harrison in Lewis and Clark County, Montana, and at Miles City. A cemetery may be located in Missoula County and in Yellowstone County if funding allows.

(3) The board may establish additional state veterans' cemeteries only as funding allows.

(4) (a) The board may designate a veterans' cemetery established pursuant to 7-35-2205 as a state veterans' cemetery if:

(i) the legislature has authorized the cemetery pursuant to subsection (2) or (3); and

(ii) the board certifies that the cemetery is operated and maintained under the same standards and interment eligibility criteria as required for a state veterans' cemetery established by the board.

(b) A cemetery designated under this subsection (4) as a state veterans' cemetery must be recognized and identified as a state veterans' cemetery on official state maps, in other appropriate state publications and websites, and on appropriate state road signs.

History: **En. Sec. 1, Ch. 734, L. 1985; amd. Sec. 7, Ch. 109, L. 1997; amd. Sec. 14, Ch. 51, L. 1999; amd. Secs. 3, 7, Ch. 451, L. 2003; amd. Sec. 8, Ch. 491, L. 2003; amd. Sec. 1, Ch. 600, L. 2005; amd. Sec. 1, Ch. 370, L. 2007.**

Cross-References

Jurisdiction over Veterans Center, 2-1-212.

10-2-602. Rulemaking authority. The board shall adopt rules to administer the state veterans' cemetery program and to provide criteria for determining who may be buried in a state veterans' cemetery. The criteria must include but are not limited to discharge status and length of service. The rules must be adopted in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4.

History: **En. Sec. 2, Ch. 734, L. 1985; amd. Sec. 8, Ch. 109, L. 1997; amd. Sec. 9, Ch. 491, L. 2003.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-2-603. Special revenue account — use of funds — solicitation. (1) There is an account in the special revenue fund to the credit of the board for the state veterans' cemeteries.

(2) Plot allowances, donations to the cemetery program, and fund transfers pursuant to 15-1-122(2)(d) must be deposited into the account.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the board and may be used only for the construction, maintenance, operation, and administration of the state veterans' cemeteries.

(4) The board shall solicit veterans' license plate sales and donations on behalf of the state veterans' cemeteries.

History: **En. Sec. 1, Ch. 159, L. 1993; amd. Sec. 9, Ch. 109, L. 1997; amd. Sec. 90, Ch. 574, L. 2001; amd. Sec. 10, Ch. 491, L. 2003; amd. Sec. 2, Ch. 600, L. 2005; amd. Sec. 4, Ch. 486, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 486 in (2) after "pursuant to" substituted "15-1-122(2)(d)" for "15-1-122(3)(d)". Amendment effective July 1, 2009.

10-2-604. Authority to exercise eminent domain for purposes of establishing veterans' cemetery. The board of veterans' affairs may take property for public use for a veterans' cemetery or place of burial of the dead. The power of eminent domain must be exercised under the provisions of Title 70, chapter 30.

History: **En. Sec. 1, Ch. 451, L. 2003; amd. Sec. 7, Ch. 451, L. 2003.**

Part 7
First Special Service Force Memorial Trust

Part Cross-References

Trust Code, Title 72, ch. 33 through 36.

10-2-701. Short title. This part may be cited as the "First Special Service Force Memorial Monument Permanent Trust Act".

History: **En. Sec. 1, Ch. 41, L. 1995; Sec. 35-21-901, MCA 1997; redes. 10-2-701 by Sec. 99(3), Ch. 51, L. 1999.**

10-2-702. Procedure for appointment of corporate trustee — term of office — annual reporting requirement — discharge for good cause. (1) Upon receipt of the articles of dissolution or a decree of dissolution of the nonprofit corporation that has established a permanent care and improvement trust fund for the care, maintenance, and improvement of the first special service force memorial monument, located in Helena, Montana, the secretary of state shall notify the first judicial district court that the appointment of a corporate trustee is necessary.

(2) The remaining trustees of the dissolved corporation shall make an accounting of the trust fund and present it to the district court judge.

(3) The remaining trustees of the dissolved corporation may nominate a trust company authorized to do business in Montana to be the corporate trustee of the trust fund.

(4) The district court judge may accept applications for corporate trustee from interested persons.

(5) The district court judge shall order appointment of a corporate trustee after consideration of the remaining trustees' nomination and the applications of any interested persons.

(6) The term of office for a corporate trustee is 5 years unless the corporate trustee leaves the state of Montana or is permanently removed from office by the district court judge for good cause shown.

(7) The corporate trustee shall annually, by September 1, or more often upon order of the district court, file in the office of the clerk of the district court of Lewis and Clark County a verified, detailed financial statement of:

(a) the principal assets;

(b) the income derived from investments;

(c) the amount of money expended and to whom for the care, maintenance, and improvement of the monument and related costs; and

(d) the amount of the corporate trustee's compensation during the preceding year.

(8) An interested party may apply to the district court for an order requiring the corporate trustee to make an accounting at any time.

(9) Upon receipt of the financial statement required in subsection (7), the district court judge may discharge the corporate trustee for good cause and may appoint another corporate trustee.

History: En. Sec. 2, Ch. 41, L. 1995; Sec. 35-21-902, MCA 1997; redes. 10-2-702 by Sec. 99(3), Ch. 51, L. 1999.

10-2-703. Principal of trust fund inviolate — investment — use of income — corporate trustee compensation — surplus. (1) The principal of the trust fund must remain intact and inviolate.

(2) The principal of the trust fund must be invested in a manner in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-201. Investment is subject to the approval of the district court judge.

(3) The income received from investment of the principal must be used for the care, maintenance, and improvement of the memorial monument and for compensation of the corporate trustee.

(4) The corporate trustee of the trust fund shall receive compensation as determined by the district court judge.

(5) In the event that the income from the trust fund is not needed in its entirety for the purposes in subsection (3), the surplus must be added to the principal of the trust fund.

History: En. Sec. 3, Ch. 41, L. 1995; Sec. 35-21-903, MCA 1997; redes. 10-2-703 by Sec. 99(3), Ch. 51, L. 1999.

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Chapter Cross-References

Department of Military Affairs created, 2-15-1201.
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Closure of banks during emergency, 32-1-561, et seq.
Nuclear facilities — evacuation and emergency medical aid plans, 75-20-1204.
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Energy emergency laws to supplement civil defense laws, 90-4-317.
Western Interstate Nuclear Compact, Title 90, ch. 5, part 2.

Part 1
General Provisions and Administration

10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or human-caused disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R.C.M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974; amd. Sec. 2, Ch. 335, L. 1977; R.C.M. 1947, 77-2301; amd. Sec. 1, Ch. 71, L. 1987; amd. Sec. 1, Ch. 595, L. 1989; amd. Sec. 15, Ch. 56, L. 2009; amd. Sec. 1, Ch. 255, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 255 in introductory clause near end after "state" inserted "to the fullest extent practicable"; in (6) inserted "mitigation"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Legislative findings and intent concerning energy emergency, 90-4-301.

10-3-102. Limitations. Parts 1 through 4 of this chapter may not be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs. However, any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster.

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or any personnel of those entities when on active duty, but state, local, and interjurisdictional disaster and emergency plans must place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter.

History: En. 77-2301.2 by Sec. 3, Ch. 335, L. 1977; R.C.M. 1947, 77-2301.2; amd. Sec. 16, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.
Power of mayor to call out militia, 7-4-4303.
Authority of Governor to proclaim martial rule, 10-1-106.
Authority of principal executive officer, 10-3-406.

10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

(6) "Division" means the division of disaster and emergency services of the department.

(7) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(8) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(9) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(10) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

(12) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R.C.M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974; amd. Sec. 4, Ch. 335, L. 1977; R.C.M. 1947, 77-2302; amd. Sec. 4, Ch. 430, L. 1983; amd. Sec. 2, Ch. 71, L. 1987; amd. Sec. 1, Ch. 176, L. 1995; amd. Sec. 1, Ch. 391, L. 2003; amd. Sec. 4, Ch. 63, L. 2009; amd. Sec. 2, Ch. 255, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 63 in definition of disaster near end after "hazardous materials" inserted "outbreak of disease"; and inserted definition of volunteer professional. Amendment effective October 1, 2009.

Chapter 255 in definition of disaster near end inserted "outbreak of disease"; inserted definition of disaster medicine; and made minor changes in style. Amendment effective October 1, 2009.

10-3-104. General authority of governor. (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(1) thru (3); amd. Sec. 2, Ch. 176, L. 1995.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.
Call of forces — when authorized, Art. VI, sec. 13, Mont. Const.
Authority of Governor to proclaim martial rule, 10-1-106.
Extension of enlistments by Governor, 10-1-303.
Governor as commander-in-chief during emergencies, 10-3-305.
Governor's emergency powers and duties generally, 10-3-305.
Governor's proclamation of emergency, 10-3-505.
Closure of hunting and fishing during fire emergency, 87-3-106.
Powers of Governor during energy emergency, 90-4-309 through 90-4-318.
Governor to appoint Board members of Western Interstate Nuclear Compact, 90-5-202.

10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.

History: (1), (3), (4)En. Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R.C.M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977; Sec. 77-2303, R.C.M. 1947; R.C.M. 1947, 77-2303, 77-2305.1(part); amd. Sec. 5, Ch. 430, L. 1983; amd. Sec. 3, Ch. 176, L. 1995.

Cross-References

Department of Military Affairs created, 2-15-1201.
Division created, 2-15-1204.
Department power to authorize construction on federal land, 18-2-102.

10-3-106. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the department of administration and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the statewide telecommunications network.

History: En. 77-2307.4 by Sec. 12, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.4; amd. Sec. 36, Ch. 313, L. 2001.

Cross-References

State government information technology and internet privacy, Title 2, ch. 17, part 5.
Cooperation with local government, 10-3-107, 10-3-202.
Cooperation with other agencies, 10-3-201.

10-3-107. National defense highway plans. The department of military affairs shall:

(1) cooperate with the agencies of this and other states and of the federal government which are connected with national defense in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense;

(2) coordinate the activities of the department of transportation and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials;

(3) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans.

History: (1)En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974; Sec. 32-1702, R.C.M. 1947; (2)En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974; Sec. 32-1703, R.C.M. 1947; R.C.M. 1947, 32-1702, 32-1703; amd. Sec. 6, Ch. 430, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway traffic safety program, Title 61, ch. 2, part 1.

10-3-108 and 10-3-109 reserved.

10-3-110. Medical services during declared emergency or disaster — limitation of liability — administrative disciplinary sanctions. (1) Except as provided in subsection (3), a health care professional licensed to practice in Montana who, in good faith and regardless of compensation, renders or fails to render emergency care, health care services, or first aid during a declared emergency or disaster is not liable for any civil damages or injury unless the damages or injury was caused by gross negligence or willful and wanton misconduct and as a result of:

(a) an act or omission arising out of activities undertaken in response to the disaster or emergency;

(b) any act or omission related to the rendering of or failure to render services; or

(c) evacuation or treatment or the failure to evacuate or provide treatment conducted in accordance with disaster medicine or at the direction of military or government authorities.

(2) A licensing program, licensing board, or any other disciplinary authority in Montana may impose administrative sanctions upon a health care professional for unprofessional conduct in response to a declared public health emergency that occurs in Montana. An administrative disciplinary sanction imposed upon a health care professional who is licensed in another state must be reported to the licensing authority in the health care professional's state and each state in which the health care professional is licensed. The standard of review for administrative disciplinary sanctions must be whether the health care professional exercised good faith clinical judgment given the circumstances under which the judgment was exercised.

(3) This section does not apply to a health care provider employed by the United States, a state, or a political subdivision acting within the scope of the provider's employment or duties.

History: En. Sec. 6, Ch. 255, L. 2009.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

10-3-111. Personnel immune from liability. (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense or other response and recovery activity worker, a volunteer professional, or a member of an agency engaged in civilian defense or other response and recovery activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.

(2) The following individuals or entities are not liable for the death or injury of individuals or for damage to property as a result of an act or omission specifically arising out of activities undertaken in response to an incident, disaster, or emergency and while complying with or reasonably attempting to comply with parts 1 through 4 and 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 and 12 of this chapter:

(a) the state or a political subdivision of the state;

(b) except in cases of willful misconduct, gross negligence, or bad faith:

(i) the employees, agents, or representatives of the state or a political subdivision of the state; or

(ii) a volunteer or auxiliary civilian defense or other response and recovery activity worker, a member of an agency engaged in civilian defense or other response and recovery activity, a volunteer professional, or the owners of facilities used for civil defense or other response and recovery shelters pursuant to a fallout shelter license or privilege agreement or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R.C.M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974; rep. Sec. 15, Ch. 49, L. 1977; re-en. Sec. 2, Ch. 73, L. 1977; R.C.M. 1947, 77-2308; amd. Sec. 4, Ch. 176, L. 1995; amd. Sec. 1, Ch. 520, L. 1999; amd. Sec. 5, Ch. 63, L. 2009; amd. Sec. 3, Ch. 255, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 63 in (1) in first sentence near middle inserted "a volunteer professional"; in (2) at beginning inserted introductory language providing that certain listed individuals and entities are not liable for damages resulting from an act or omission arising out of responding to incidents, disasters, or emergencies; in (2)(b)(ii) near beginning after "defense activity" deleted "during an incident, disaster, or emergency", inserted "a volunteer professional", after "agreement" deleted "and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter", and after "state" deleted "are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 255 in (1) in first sentence before "worker" inserted "or other response and recovery activity" and before "activity" inserted "or other response and recovery"; in (2)(b)(ii) before "worker" inserted "or other response and recovery activity" and before "activity" and "shelters" inserted "or other response and recovery". Amendment effective October 1, 2009.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.
Immunity from liability, 10-1-111.
Attorney fees for militia members, 10-1-601.
Limitations on liability for emergency care, 27-1-714.
Limitations on liability of health professionals for emergency care, 41-1-405.

10-3-112. Employment requirements for personnel — political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon the person's duties, take an oath, in writing, before a person authorized to administer oaths in this state, that is substantially as follows:

"I ...., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: (1)En. Sec. 13, Ch. 218, L. 1951; Sec. 77-1313, R.C.M. 1947; amd. and redes. 77-2311 by Sec. 18, Ch. 94, L. 1974; amd. Sec. 15, Ch. 335, L. 1977; Sec. 77-2311, R.C.M. 1947; (2)En. Sec. 12, Ch. 218, L. 1951; Sec. 77-1312, R.C.M. 1947; amd. and redes. 77-2310 by Sec. 17, Ch. 94, L. 1974; amd. Sec. 14, Ch. 335, L. 1977; Sec. 77-2310, R.C.M. 1947; R.C.M. 1947, 77-2310, 77-2311; amd. Sec. 17, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Oath of officers, 10-1-202.
Oath of enlistment, 10-1-302.
Discrimination by state, 49-2-308.

10-3-113. Identification — civil defense symbol. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

History: En. 77-2315 by Sec. 19, Ch. 335, L. 1977; R.C.M. 1947, 77-2315.

Cross-References

Civil defense defined, 10-3-103.

10-3-114. Confiscation of firearm by government prohibited — private right of action — costs and expenses. (1) Following a declaration of an emergency or disaster pursuant to this chapter, a peace officer or other person acting or purporting to act on behalf of the state or a political subdivision of the state may not take a confiscation action.

(2) After a violation of subsection (1) has occurred, the party injured by a confiscation action may bring an action for damages in a court having jurisdiction.

(3) A party awarded damages pursuant to this section must also be awarded the party's costs and expenses in bringing the action, including reasonable attorney fees.

(4) (a) As used in this section, "confiscation action" means the intentional deprivation by a person in Montana of a privately owned firearm.

(b) The term does not include the taking of a firearm from a person:

(i) in self-defense;

(ii) possessing a firearm while the person is committing a felony or misdemeanor; or

(iii) who may not lawfully possess the firearm because of a prior criminal conviction.

History: En. Sec. 1, Ch. 459, L. 2007.

10-3-115 through 10-3-117 reserved.

10-3-118. Interstate licensure recognition — volunteer professionals. (1) (a) Subject to subsection (2), whenever a state of emergency or disaster is in effect, a volunteer professional who possesses an active, unrestricted license in another state may practice in Montana to the extent authorized by law as if the person had been licensed in Montana.

(b) A volunteer professional shall adhere to the scope and standards of practice set forth in licensing provisions, practice acts, or other laws or policies of Montana.

(2) (a) Prior to providing services in Montana, a volunteer professional who is licensed for professional services in another state shall register with the appropriate licensing agency in the state of Montana. The licensing agency shall verify the current licensure of the volunteer professional in the other state or states prior to registering the licensee.

(b) Based on available funding, the licensing agency may request and accept funds for the purpose of implementing the provisions of subsection (2)(a).

History: En. Sec. 1, Ch. 63, L. 2009.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

10-3-119. Administrative disciplinary sanctions. (1) A licensing board or a licensing program in Montana:

(a) may impose administrative sanctions upon a volunteer professional for unprofessional conduct in response to an emergency or disaster that occurs in Montana; and

(b) shall report any administrative sanctions imposed upon a volunteer professional licensed in another state to the appropriate licensing board or disciplinary authority in any other state in which the practitioner is known to be licensed.

(2) In determining whether to impose administrative sanctions under subsection (1), a licensing board or other disciplinary authority in Montana shall consider any exigent circumstances in which the conduct took place in light of the emergency or disaster.

History: En. Sec. 2, Ch. 63, L. 2009.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

10-3-120. Rulemaking authority. The department of labor and industry may adopt rules necessary to implement 10-3-118 and 10-3-119 to recognize and register out-of-state volunteer professionals.

History: En. Sec. 3, Ch. 63, L. 2009.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

Part 2
Intergovernmental Cooperation

Part Cross-References
Emergency Management Assistance Compact, Title 10, ch. 3, part 10.

10-3-201. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of parts 1 through 4 of this chapter and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or securing emergency and disaster planning and services, identify the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(1) thru (4).

Cross-References
Interlocal agreements, Title 7, ch. 11, part 1.
Authority of principal executive officer, 10-3-406.

10-3-202. Mutual aid — cooperation. (1) Political subdivisions and governmental fire agencies organized under Title 7, chapter 33, must be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state or any other state or the United States pursuant to Title 10, chapter 3, part 11, for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states and shall carry out arrangements of any of the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American red cross under its congressional charter.

History: (1) thru (3)En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R.C.M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974; amd. Sec. 13, Ch. 49, L. 1977; amd. Sec. 10, Ch. 335, L. 1977; Sec. 77-2306, R.C.M. 1947; (4)En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; R.C.M. 1947, 77-2305.1(5), 77-2306; amd. Sec. 7, Ch. 46, L. 1997; amd. Sec. 5, Ch. 292, L. 2007.

Cross-References
Authority of fire district trustees to conclude mutual aid agreements, 7-33-2108.
Authority of county governing body to conclude mutual aid agreements, 7-33-2202.
Authority of governing body of fire service area to conclude mutual aid agreements, 7-33-2405.
Authority of municipalities to conclude mutual aid agreements, 7-33-4112.
State disaster and emergency plan, 10-3-301.

10-3-203. Acceptance of services, gifts, grants, and loans. (1) Whenever the federal government or any agency or officer of the federal government offers to the state, or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, reimbursement of mutual aid, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer. Upon the acceptance, the governor of the state or the executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds on behalf of the state or political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1) or to the department of natural resources and conservation for fire suppression purposes or costs.

History: En. Sec. 11, Ch. 218, L. 1951; Sec. 77-1311, R.C.M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974; amd. Sec. 13, Ch. 335, L. 1977; R.C.M. 1947, 77-2309; amd. Sec. 6, Ch. 703, L. 1985; amd. Sec. 4, Ch. 389, L. 1999; amd. Sec. 1, Ch. 426, L. 2003.

Cross-References

Governor authorized to accept funds — designation of state agency, 17-3-105.

10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, as defined in the compact, that have enacted or enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if the governor finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Subsections (1) and (2) may not be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services must be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision of a state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

History: En. 77-2307.3 by Sec. 11, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.3; amd. Sec. 1, Ch. 228, L. 1985; amd. Sec. 18, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-3-205. Authority to join interstate mutual aid compact — supplemental agreements. (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate mutual aid compact.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate mutual aid compact as set forth in 10-3-207.

History: (1)En. Sec. 2, Ch. 213, L. 1951; Sec. 77-1402, R.C.M. 1947; (2)En. Sec. 4, Ch. 213, L. 1951; Sec. 77-1404, R.C.M. 1947; R.C.M. 1947, 77-1402, 77-1404; amd. Sec. 2, Ch. 228, L. 1985.

10-3-206. Repealed. Sec. 5, Ch. 228, L. 1985.

History: En. Sec. 3, Ch. 213, L. 1951; R.C.M. 1947, 77-1403.

10-3-207. Text of compact. The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 (now repealed) and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the

other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal.

History: En. Sec. 3, Ch. 228, L. 1985; amd. Sec. 43, Ch. 42, L. 1997.

10-3-208. Rulemaking authority. The department of military affairs may adopt rules necessary to implement the interstate mutual aid compact.

History: En. Sec. 4, Ch. 228, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-3-209. Political subdivision requests for assistance — application to fire districts, fire service areas, and fire companies in unincorporated places — immunity. (1) If an incident, emergency, or disaster occurs in a political subdivision that has not concluded a mutual aid agreement pursuant to 10-3-202, the local or interjurisdictional agency, incident commander, or principal executive officer of the political subdivision may request assistance from another public or private agency.

(2) (a) The following individuals or entities may request assistance with an incident, emergency, or disaster if a mutual aid agreement has not been concluded for protection of the area within the jurisdiction of these individuals or entities:

(i) the trustees of a rural fire district created pursuant to Title 7, chapter 33, part 21, a representative of the trustees, or an incident commander for the district;

(ii) the chief of a rural fire company organized pursuant to 7-33-2311 or an incident commander for the chief;

(iii) the governing body of a fire service area created pursuant to Title 7, chapter 33, part 24, a representative of the governing body, or an incident commander for the area.

(b) A request for assistance by an individual or entity under subsection (2)(a) may be made to any of the following:

(i) a fire district;

(ii) an unincorporated municipality;

(iii) an incorporated municipality;

(iv) a state agency;

(v) a private fire prevention agency;

(vi) an agency of the federal government;

(vii) a fire service area;

(viii) the governing body of a political subdivision; or

(ix) the governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to part 11 of this chapter.

(3) A public or private agency receiving a request pursuant to subsection (1) or (2) shall determine if it will provide the requested assistance or if it will provide other assistance and shall inform the requesting local or interjurisdictional agency, principal executive officer,

incident commander, or other individual or entity making the request, as soon as possible, of that determination. The nature and extent of assistance provided by a public or private agency may be determined only by that public or private agency.

(4) The incident commander of the local or interjurisdictional agency making a request for assistance has overall responsibility for command of the resources provided by a public or private agency responding to a request. However, operational control of individual pieces of equipment and personnel furnished by the responding public or private agency remains with that agency.

(5) This section does not waive an immunity or limitation on liability applicable to any of the following entities or individuals requesting or receiving assistance pursuant to this section:

(a) a fire district;

(b) a fire service area;

(c) a fire company;

(d) an unincorporated municipality, town, or village;

(e) a political subdivision; or

(f) an agent, employee, representative, or volunteer of an entity listed in this subsection.

History: En. Sec. 8, Ch. 46, L. 1997; amd. Sec. 6, Ch. 292, L. 2007.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.
Liability exposure and insurance coverage, Title 2, ch. 9.
Limit on liability of local governments, 7-1-4125.
Authority of fire district trustees to conclude mutual aid agreements, 7-33-2108.
Authority of county governing body to conclude mutual aid agreements, 7-33-2202.
Immunity of fire officials, 7-33-2208.
Authority of governing body of fire service area to conclude mutual aid agreements, 7-33-2405.
Authority of municipalities to conclude mutual aid agreements, 7-33-4112.
Limitation on liability for delay in receipt or transmittal of fire report, 7-33-4114.
Immunity of National Guard, 10-1-111.

Part 3
State Planning and Execution

10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an incident, emergency, or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of personnel and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part); amd. Sec. 7, Ch. 430, L. 1983; amd. Sec. 5, Ch. 176, L. 1995.

Cross-References

Emergency resource management plan, 10-3-504.
Energy supply emergencies — energy curtailment required, 90-4-307.

10-3-302. Declaration of emergency — effect and termination. (1) A state of emergency may be declared by the governor when the governor determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and

materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies. An executive order or proclamation may authorize the practice of disaster medicine. The provisions of 10-3-110 do not apply to the state of emergency unless the order or proclamation includes a provision authorizing the practice of disaster medicine.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which must be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(4); amd. Sec. 19, Ch. 56, L. 2009; amd. Sec. 4, Ch. 255, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 255 in (2) inserted second and third sentences related to practice of disaster medicine; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.
Emergency powers of Governor generally, 10-3-104.
Proclamation of emergency, 10-3-505.
Power of Governor to declare energy emergency, 90-4-310.

10-3-303. Declaration of disaster — effect and termination. (1) A state of disaster may be declared by the governor when the governor determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies. The executive order or proclamation may authorize the practice of disaster medicine. The provisions of 10-3-110 do not apply to the state of disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(5), (6); amd. Sec. 20, Ch. 56, L. 2009; amd. Sec. 5, Ch. 255, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 255 in (2) inserted second and third sentences related to practice of disaster medicine; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.
Proclamation of emergency, 10-3-505.

10-3-304. Dissemination. An executive order or proclamation issued under this part shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

History: **En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(7).**

10-3-305. Governor commander-in-chief — duties. (1) During an incident and during a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for incident, emergency, or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(2) The governor shall use the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of parts 1 through 4 of this chapter.

History: **En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(8), (9); amd. Sec. 6, Ch. 176, L. 1995.**

Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.
Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.
Emergency powers of Governor generally, 10-3-104.

10-3-306 through 10-3-309 reserved.

10-3-310. Incident response — authority — appropriation — expenditures — recovery — rules. (1) The governor may by executive order upon request of the local governing body or its authorized agent activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed $10,000 per incident and not to exceed $100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government for incident response costs incurred by that local government.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section.

History: **En. Sec. 8, Ch. 176, L. 1995.**

10-3-311. Emergency or disaster expenditures — restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) No expenditures for flood-related damages may be made to assist a political subdivision that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 CFR, and does not have in effect adequate regulations for such areas or has failed to enforce such regulations as required by the national flood insurance program.

(3) The governor is charged with the implementation of the program.

(4) The administration and development of rules for implementation of this section must be promulgated by the department.

History: **(1)En. Sec. 1, Ch. 409, L. 1971; amd. Sec. 19, Ch. 577, L. 1977; Sec. 79-2501, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 409, L. 1971; Sec. 79-2503, R.C.M. 1947; R.C.M. 1947, 79-2501, 79-2503; amd. Sec. 1, Ch. 216, L. 1981; amd. Sec. 8, Ch. 430, L. 1983; amd. Sec. 1, Ch. 111, L. 1985; amd. Sec. 3, Ch. 71, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Authorization to transfer county funds for emergency relief, 7-31-2101.
Levying of emergency taxes by city and county, 10-3-405.
Adoption and levy of emergency budget by school district trustees, 20-9-161 through 20-9-166.
Energy emergency expenditures authorized, 90-4-318.

10-3-312. Maximum expenditure by governor — appropriation. (1) Whenever a disaster or an emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under 80-7-1013, is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed $16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

History: **En. Sec. 2, Ch. 409, L. 1971; R.C.M. 1947, 79-2502; amd. Sec. 1, Ch. 626, L. 1983; amd. Sec. 7, Ch. 703, L. 1985; amd. Sec. 2, Ch. 595, L. 1989; amd. Sec. 1, Ch. 256, L. 1991; amd. Sec. 1, Ch. 12, Sp. L. July 1992; amd. Sec. 7, Ch. 176, L. 1995; amd. Sec. 1, Ch. 401, L. 1995; amd. Sec. 4, Ch. 422, L. 1997; amd. Sec. 1, Ch. 55, L. 1999; amd. Sec. 1, Ch. 569, L. 2001; amd. Sec. 2, Ch. 426, L. 2003; amd. Sec. 1, Ch. 182, L. 2007; amd. Sec. 15, Ch. 429, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 429 in (1) near beginning of first sentence after "90-4-302" inserted "or an invasive species emergency declared under 80-7-1013"; and made minor changes in style. Amendment effective July 1, 2009.

10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make the units available to any political subdivision of the state;

(b) to assist any political subdivision of this state that is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under regulations that the governor prescribes, to temporarily suspend or modify for not to exceed 60 days any state laws or regulations relating to public health, safety, zoning, or transportation, within or across the state, when by proclamation the governor declares the suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip the sites to utilize the housing units.

(3) Parts 1 through 4 of this chapter may not be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

History: En. 77-2312 by Sec. 16, Ch. 335, L. 1977; R.C.M. 1947, 77-2312; amd. Sec. 21, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon the governor's determination that a political subdivision of the state will suffer a substantial loss of tax and other revenue from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, the application amount may not exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenue of the political subdivision is insufficient to meet its operating expenses, including additional emergency-related or disaster-related expenses of the political subdivision.

History: En. 77-2313 by Sec. 17, Ch. 335, L. 1977; R.C.M. 1947, 77-2313; amd. Sec. 8, Ch. 703, L. 1985; amd. Sec. 22, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

History: En. 77-2314 by Sec. 18, Ch. 335, L. 1977; R.C.M. 1947, 77-2314.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney fees for militia members, 10-1-601.

Part 4
Local and Interjurisdictional Planning and Execution

Part Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

10-3-401. Local and interjurisdictional disaster and emergency plan — distribution. (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, if any, and officials;

(b) the disaster and emergency chain of command;

(c) local evacuation authority and responsibility; and

(d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(5), (6); amd. Sec. 9, Ch. 430, L. 1983; amd. Sec. 4, Ch. 71, L. 1987.

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Mutual aid and cooperation, 10-3-202.

State disaster and emergency plan, 10-3-301.

10-3-402. Local emergency — declaration and termination. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(3) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(1), (2); amd. Sec. 3, Ch. 595, L. 1989.

Cross-References

Adoption of emergency resolution by school district trustees, 20-9-163.

10-3-403. Local disaster — declaration and termination. (1) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(2) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(3); amd. Sec. 4, Ch. 595, L. 1989.

10-3-404. Contents of order — effect. (1) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, and the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such order or resolution shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division and the agency charged with recording the official records of the political subdivision.

(2) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(4), (5); amd. Sec. 10, Ch. 430, L. 1983.

10-3-405. Levying emergency tax — disposition of surplus. (1) The governing body of the city or town or the governing body of the county, or both, shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the governing body of the city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies.

History: (1) thru (4)En. Sec. 5, Ch. 97, L. 1967; Sec. 11-4305, R.C.M. 1947; (5)En. Sec. 6, Ch. 97, L. 1967; Sec. 11-4306, R.C.M. 1947; R.C.M. 1947, 11-4305(1) thru (4), 11-4306; amd. Sec. 2, Ch. 216, L. 1981.

Cross-References

Authority of County Commissioners to transfer funds for emergency relief, 7-31-2101.
Emergency or disaster expenditures authorized by Governor, 10-3-311.
Procedure to make emergency expenditures by school district trustees, 20-9-161 through 20-9-166.

10-3-406. Authority of principal executive officer. (1) Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(a) direct and compel the evacuation of all or part of the population from an incident or emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(b) control the ingress and egress to and from an incident or emergency or disaster area and the movement of persons within the area.

(2) Subject to 7-33-2212(4)(a), the authority to control ingress and egress, as provided in subsection (1)(b), includes the authority to close wildland areas to access during periods of extreme fire danger.

History: En. Sec. 5, Ch. 71, L. 1987; amd. Sec. 5, Ch. 595, L. 1989; amd. Sec. 2, Ch. 450, L. 2007.

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Part 5
Emergency Resource Management

10-3-501. Policy of state. (1) The legislature recognizes that an enemy attack upon the United States is a possibility; that such an attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an enemy attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an enemy attack. Therefore, it is necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the

most effective preparation and use may be made of available personnel, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R.C.M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974; R.C.M. 1947, 77-2401; amd. Sec. 44, Ch. 42, L. 1997; amd. Sec. 23, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

10-3-502. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Emergency resources management plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids or other forms of warfare upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resources management plan.

(2) In performing duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon the governor, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R.C.M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974; R.C.M. 1947, 77-2403; amd. Sec. 24, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.
Call of forces when authorized, Art. VI, sec. 13, Mont. Const.
Authority of Governor to proclaim martial rule, 10-1-106.
Extension of enlistments by Governor, 10-1-303.
Governor as commander-in-chief during emergencies, 10-3-305.
Governor's proclamation of emergency, 10-3-505.

10-3-504. Emergency resources management plan. The emergency resources management plan must provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. The plan is supplemental to the national plan for emergency preparedness adopted by the president of the United States and becomes operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state emergency resources management plan will substitute for and replace the federal program until the time that the federal program becomes effective in the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part); amd. Sec. 45, Ch. 42, L. 1997.

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-505. Proclamation of emergency — effect and termination. (1) Following an attack, if the governor finds that action is necessary to deal with the danger to the public safety caused by the attack or to aid in the postattack recovery or rehabilitation of the United States or any part of the United States, the governor shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. A proclamation is ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate, by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take other action that may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by means that may be available must be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority of this part is inoperative during the period of time and to the extent that inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part of the territory.

(5) The governor's power and authority to issue a proclamation following an attack must be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress. However, the proclamation must terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R.C.M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974; amd. Sec. 14, Ch. 49, L. 1977; R.C.M. 1947, 77-2404; amd. Sec. 25, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Declaration of emergency, 10-3-302.
Declaration of disaster, 10-3-303.
Debris and wreckage removal in emergencies or disasters, 10-3-315.
Part inoperative upon convening of Legislature, 10-3-609.

10-3-506. Judicial inquiry of proclamation. Every proclamation and the facts related in the proclamation issued under this part are subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R.C.M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974; R.C.M. 1947, 77-2405.

Cross-References

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.
Original jurisdiction of Supreme Court, 3-2-202.

10-3-507. Penalty for violation of rules. A person violating any of the rules or orders adopted and promulgated under 10-3-505 shall upon conviction be subject to a fine not to exceed $10,000 or to a term of imprisonment not to exceed 5 years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R.C.M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974; R.C.M. 1947, 77-2406.

Part 6
Continuity of Government

Part Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

10-3-601. Citation of part. This part may be cited as "The Continuity in Government Act".

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973; R.C.M. 1947, 82-3801; amd. Sec. 11, Ch. 430, L. 1983.

10-3-602. Filling vacancy in governorship. Following an enemy attack, the line of succession to the office of governor shall be extended as provided in Title 2, chapter 16, part 5.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973; R.C.M. 1947, 82-3802; amd. Sec. 6, Ch. 142, L. 1979.

Cross-References

Officers of Senate and House of Representatives, 5-2-221.

10-3-603. Filling vacancy in boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack, if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment. Provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973; R.C.M. 1947, 82-3803.

Cross-References

Filling vacancies created by other causes, 7-4-2106.

10-3-604. Filling vacancy in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967; R.C.M. 1947, 82-3804.

Cross-References

Filling vacancies created by other causes, 7-4-4112.

10-3-605. Filling vacancy for city or town executive. If the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of the city or town.

History: En. Sec. 5, Ch. 268, L. 1967; R.C.M. 1947, 82-3805; amd. Sec. 26, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Filling vacancies created by other causes, 7-4-4112.

10-3-606. Quorum requirement. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute, then those legislators or members of the council, board, or commission available for duty shall constitute the legislature, board, or commission and quorum requirements shall be suspended. Where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967; R.C.M. 1947, 82-3806.

Cross-References

Quorum of Legislature, Art. V, sec. 10, Mont. Const.
Quorum of City or Town Council, 7-5-4121.
Quorum of school district trustees, 20-3-322.

10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. The governor shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and other factors considered pertinent. The move of the seat of government is effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967; R.C.M. 1947, 82-3807; amd. Sec. 12, Ch. 430, L. 1983; amd. Sec. 27, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.
Change of venue of District Court in emergency, 3-5-405.
Proclamation of emergency — effect and termination, 10-3-505.

10-3-608. Relocating seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as it deems most suitable.

History: En. Sec. 8, Ch. 268, L. 1967; R.C.M. 1947, 82-3808.

Cross-References

Change of venue of District Court in emergency, 3-5-405.
County buildings — replacement or repair, 7-14-2524.
Proclamation of emergency — effect and termination, 10-3-505.

10-3-609. Part inoperative upon convening of legislature. The provisions of this part shall become inoperative at the time of the convening of the first legislature following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967; R.C.M. 1947, 82-3809.

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

Part 7
Tactical Incident Assistance

10-3-701. Short title. This part may be cited as the "Tactical Incident Assistance Act".

History: En. Sec. 1, Ch. 455, L. 1989.

10-3-702. Definitions. As used in this part, the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

(a) a barricaded person with a gun;
(b) a person taken hostage;
(c) arrests in extraordinary circumstances;
(d) civil disorder;
(e) terrorist activity;
(f) protection of a dignitary; and
(g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to high-risk conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life.

History: En. Sec. 2, Ch. 455, L. 1989; amd. Sec. 28, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-3-703. Tactical team aiding another jurisdiction. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may request the assistance of a tactical team from another jurisdiction.

(2) A tactical team called to another jurisdiction has peace officer status in that jurisdiction under the authority of the requesting agency.

History: En. Sec. 3, Ch. 455, L. 1989.

10-3-704. Local agency to contact national guard. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may call the national guard staff duty office for assistance as provided in 10-3-705.

(2) The national guard staff duty officer shall inform the governor of the request.

History: En. Sec. 4, Ch. 455, L. 1989.

10-3-705. Tactical incident — national guard assistance. (1) Upon request by a local law enforcement agency administrator, the governor may order the national guard to provide transportation services and the use of national guard equipment to the requesting agency tactical team or to tactical teams that are providing assistance to the requesting agency during a tactical incident.

(2) This section does not give the national guard the status or authority of peace officers.

History: En. Sec. 5, Ch. 455, L. 1989.

Cross-References

Authority of Governor to proclaim martial rule, 10-1-106.

Governor's emergency powers and duties generally, 10-3-305.

Part 8
Search and Rescue

10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(2)(f);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of $6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of $6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of $6,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information.

History: En. Sec. 1, Ch. 534, L. 2003; amd. Sec. 2, Ch. 542, L. 2005; amd. Sec. 1, Ch. 332, L. 2007; amd. Sec. 1, Ch. 71, L. 2009; amd. Sec. 5, Ch. 486, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 71 in (3)(a)(i) in first sentence and in (3)(a)(ii) near beginning increased maximum for each rescue mission from $3,000 to $6,000; and in (3)(b)(i) in first sentence increased maximum matching funds from $2,000 to $6,000 for each unit in a calendar year. Amendment effective October 1, 2009.

Chapter 486 in (2)(a) after "pursuant to" substituted "15-1-122(2)(f)" for "15-1-122(3)(f)". Amendment effective July 1, 2009.

Part 9
Intrastate Mutual Aid System

10-3-901. Short title. This part may be cited as the "Statewide Mutual Aid System Act".

History: En. Sec. 1, Ch. 354, L. 2005.

10-3-902. Policy — purpose. (1) It is the policy of the state that:

(a) available resources should be made available whenever possible and practical to minimize the negative impacts of disasters and emergencies, regardless of the political jurisdiction in this state within which the disaster or emergency occurs and regardless of the political jurisdictions from which a request for assistance arises or from which or to which the resources are made available;

(b) agreements, either formal or informal, written or oral, between or among political subdivisions of this state, that exist or are entered into for the purpose of providing mutual aid in the event of a disaster or emergency should remain options for political subdivisions and should not be infringed upon or in any way affected by the provisions of this part; and

(c) in particular, the provisions of this part do not affect any mutual aid agreement, either formal or informal, written or oral, that is made or that may be made pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703 or a request for assistance or aid or assistance or aid provided or received pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703.

(2) It is the purpose of this part to:

(a) establish an effective and efficient mutual aid system in which a political jurisdiction can choose to participate that can operate separate from yet integrated with other freestanding mutual aid systems or agreements;

(b) provide to political jurisdictions in the state another option for establishing mutual aid agreements and for requesting, providing, and receiving mutual aid; and

(c) allow political jurisdictions maximum flexibility to protect life and property through mutual aid agreements.

History: En. Sec. 2, Ch. 354, L. 2005.

10-3-903. Statewide mutual aid system — definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana intrastate mutual aid committee created in 10-3-904.
(2) "Disaster" has the meaning provided in 10-3-103.
(3) "Emergency" has the meaning provided in 10-3-103.
(4) "Member jurisdiction" means the state of Montana or a political subdivision or a federally recognized Indian tribe that participates in the system.
(5) "System" means the Montana intrastate mutual aid system provided for in 10-3-906.

History: En. Sec. 3, Ch. 354, L. 2005; amd. Sec. 1, Ch. 43, L. 2007.

10-3-904. Montana intrastate mutual aid committee — members — officers — meetings — compensation. (1) There is a Montana intrastate mutual aid committee.

(2) All members of the committee must be appointed by and serve at the pleasure of the state emergency response commission established in 10-3-1204.

(3) The committee shall elect from among its members a presiding officer, a vice presiding officer, and any other officers considered necessary or advisable by the committee.

(4) The committee shall meet at least annually and may meet at the call of the presiding officer or as otherwise considered necessary or advisable by two-thirds of the members.

(5) Members of the committee are not entitled to compensation or to reimbursement for expenses incurred for serving on or participating in the activities of the committee. This subsection does not preclude a member jurisdiction from compensating or reimbursing the expenses of a committee member.

History: En. Sec. 4, Ch. 354, L. 2005.

10-3-905. Montana intrastate mutual aid committee — duties. The committee shall:
(1) review the progress and status of intrastate mutual aid;
(2) assist in developing methods to track and evaluate activation of the system;
(3) examine issues facing member jurisdictions in the implementation of intrastate mutual aid;
(4) develop, adopt, and disseminate comprehensive guidelines and procedures that address the following:
(a) projected or anticipated costs of establishing and maintaining the system;
(b) checklists for requesting and providing intrastate mutual aid assistance;
(c) recordkeeping for all member jurisdictions; and
(d) procedures for reimbursing the actual and legitimate expenses of a member jurisdiction that responds to a request for aid or assistance through the system; and
(5) adopt any other guidelines or procedures considered necessary by the committee to implement an effective and efficient system.

History: En. Sec. 5, Ch. 354, L. 2005.

10-3-906. Intrastate mutual aid system — initial participation — withdrawing. (1) There is a Montana intrastate mutual aid system. The system is composed of and may be described as:
(a) the member jurisdictions and any action taken by a member jurisdiction pursuant to this part;
(b) the committee and any action taken by the committee pursuant to this part;
(c) the guidelines and procedures described in 10-3-905(4);
(d) any action taken with respect to requesting assistance for an emergency or disaster under this part; and
(e) any action taken with respect to responding to a request for assistance for an emergency or disaster under this part.

(2) Except as provided in subsection (4), every political subdivision of the state is part of the system.

(3) A federally recognized Indian tribe that is located within the boundaries of the state may be a member jurisdiction upon:
(a) adoption by the tribal government of a resolution declaring the tribe's desire to be a member jurisdiction; and
(b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(4) A member jurisdiction may elect not to participate or to withdraw from the system upon:

(a) adopting a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system; and

(b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(5) This section does not preclude a member jurisdiction from entering into any other agreement with another political subdivision and does not affect any other agreement to which a political subdivision is a party or may become a party.

History: En. Sec. 6, Ch. 354, L. 2005.

10-3-907. Intrastate mutual aid system — request for assistance. (1) A member jurisdiction may request assistance from another member jurisdiction:

(a) to prevent, mitigate, respond to, or recover from an emergency or disaster; or

(b) in concert with drills or exercises between member jurisdictions.

(2) A request for assistance must be made by or through the presiding officer of the governing body of the member jurisdiction or the chief executive officer or the chief executive officer's designee of a member jurisdiction. A request may be verbal or in writing and is not required to go directly to the division, as defined in 10-3-103. If a request is verbal, the request must be confirmed in writing within 30 days of the date on which the request was made.

History: En. Sec. 7, Ch. 354, L. 2005.

10-3-908. Intrastate mutual aid system — limitation on assistance — command and control. A member jurisdiction's obligation to provide assistance to prevent, respond to, or recover from an emergency or disaster or in drills or exercises is subject to the following conditions:

(1) A member jurisdiction that responds to a request for assistance from a requesting member jurisdiction may withhold resources to the extent necessary to provide reasonable protection and services for the responding jurisdiction.

(2) The personnel of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction for purposes that include medical protocols, standard operating procedures, and other protocols; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

(3) The assets and equipment of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

History: En. Sec. 8, Ch. 354, L. 2005.

10-3-909. Intrastate mutual aid system — portability of bona fides. If a person or entity holds a license, certificate, permit, or similar documentation that evidences the person's or entity's qualifications in a professional, mechanical, or other skill and the assistance of the person or entity is requested by a member jurisdiction, the person or entity is:

(1) considered to be licensed, certified, permitted, or otherwise documented in the member jurisdiction that requests assistance for the duration of the emergency or disaster or of the drills or exercises; and

(2) subject to any legal limitations or conditions prescribed by the governing body or chief executive of the member jurisdiction that receives the assistance.

History: En. Sec. 9, Ch. 354, L. 2005.

10-3-910. Intrastate mutual aid system — reimbursement — dispute resolution. (1) A requesting member jurisdiction shall reimburse each member jurisdiction that responds to a request for aid or assistance and renders aid under the system unless the member jurisdiction rendering aid donates all or a portion of the cost of the assistance to the requesting member jurisdiction.

(2) A request for reimbursement must be in accordance with procedures developed by the committee.

(3) If a dispute regarding reimbursement arises between a party that requested assistance under the system and a party that provided assistance under the system, the involved parties shall make every effort to resolve the dispute within 30 days of written notice of the dispute given by the party asserting noncompliance to the other party.

(4) (a) If the dispute is not resolved within 90 days from the date of the notice, either party may request that the dispute be resolved through arbitration.

(b) All arbitration occurring under this section must be conducted pursuant to the commercial arbitration rules and mediation procedures of the American arbitration association as the rules and procedures exist on the date of notification described in subsection (3).

History: En. Sec. 10, Ch. 354, L. 2005.

10-3-911. Intrastate mutual aid system — workers' compensation coverage. (1) If a person is an employee of a member jurisdiction that responds to a request for assistance from a member jurisdiction and the person sustains injury in the course of providing the requested assistance, the person is entitled to all applicable benefits, including workers' compensation benefits, normally available to the person as an employee of the member jurisdiction that employs the person.

(2) If the person's injury results in the person's death, the person's estate must receive any additional state and federal benefits that may be available for death in the line of duty.

History: En. Sec. 11, Ch. 354, L. 2005.

10-3-912. Liability — immunity. (1) All activities performed pursuant to a request for assistance as provided for in this part are considered to be governmental functions.

(2) Except as provided in 10-3-911, a person responding to a request for assistance who is under the operational control of the requesting member jurisdiction, as provided for in 10-3-908, is considered for the purposes of liability to be an employee of the requesting member jurisdiction.

(3) Except in the case of willful misconduct, gross negligence, or bad faith, the member jurisdiction or an employee of the member jurisdiction is immune from liability for the death of or injury to any person or for damage to property if the member jurisdiction or the employee of the member jurisdiction is complying with or attempting to comply with the system.

History: En. Sec. 12, Ch. 354, L. 2005.

Part 10
Emergency Management Assistance Compact

Part Cross-References

Intergovernmental cooperation, Title 10, ch. 3, part 2.

10-3-1001. Enactment — provisions. The Emergency Management Assistance Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

Article I - Definitions, Purposes, and Authorities

(1) As used in this compact, the following definitions apply:

(a) "Party states" means the states that enact this compact.

(b) "States" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

(2) This compact is made and entered into by and between the participating party states that enact this compact.

(3) The purpose of this compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is declared by the governor of an affected state, whether arising from natural disaster, technological hazard, human-caused disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(4) This compact also provides for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, those actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between party states.

Article II - General Implementation

(1) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each party state further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to make a prompt and effective response to an emergency. This is because few, if any, individual states have all the resources that they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(2) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state is the underlying principle on which all articles of this compact must be understood.

(3) On behalf of the governor of each party state, the legally designated state official who is assigned responsibility for emergency management is responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III - Party State Responsibilities

(1) It is the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating those plans and in carrying them out, the party states, insofar as practical, shall:

(a) review individual party state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies that the party states might jointly suffer, whether because of natural disaster, technological hazard, human-caused disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

(b) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(c) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(d) assist in warning communities adjacent to or crossing the state boundaries;

(e) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(f) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(g) provide, to the extent authorized by law, for temporary suspension of any statutes.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement apply only to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If a request is verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the following information:

(a) a description of the emergency service function for which assistance is needed, such as fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(b) the amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time that will be needed; and

(c) the specific place and time for staging of the assisting party state's response and a point of contact at that location.

(3) There must be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV - Limitations

A party state requested to render mutual aid or to conduct exercises and training for mutual aid shall take action necessary to provide and make available the resources covered by this compact in accordance with the terms of this compact. However, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for that state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except the power of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the party state in which they are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or subsequent to commencement of exercises or training for mutual aid and must continue so long as the exercises or training for mutual aid is in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Article V - Licenses and Permits

If a person holding a license, certificate, or other permit issued by a party state evidencing the meeting of qualifications for professional, mechanical, or other skills is requested for assistance by the receiving party state, that person is considered licensed, certified, or permitted by the party state requesting assistance to render aid involving that skill to meet a declared emergency or disaster. However, the person holding the license, certificate, or permit is subject to limitations and conditions that the governor of the requesting party state may prescribe by executive order or other means.

Article VI - Liability

Officers or employees of a party state rendering aid in another party state pursuant to this compact are considered agents of the requesting state for tort liability and immunity purposes. A party state or its officers or employees rendering aid in another party state pursuant to this compact are not liable on account of an act taken or omission made in good faith on the part of the forces giving that aid or on account of the maintenance or use of any equipment or supplies in connection with giving that aid. Good faith, as used in this article, does not include willful misconduct, gross negligence, or recklessness.

Article VII - Supplementary Agreements

Because it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party to this compact, this compact contains elements of a broad base common to all states. This compact does not prevent a party state from making supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may include provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII - Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of those forces in case those members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX - Reimbursement

A party state rendering aid in another party state pursuant to this compact must be reimbursed by the party state receiving that aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with a request. However, an aiding party state may assume in whole or in part a loss, damage, expense, or other cost or may loan equipment or donate services to the receiving party state without charge or cost. Two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses are not reimbursable under this provision.

Article X - Evacuation

(1) Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to require those plans, must be worked out and maintained between the party states and the emergency management or emergency services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans must be put into effect by request of the party state from which evacuees come and must include:

(a) the manner of transporting those evacuees;

(b) the number of evacuees to be received in different areas;

(c) the manner in which food, clothing, housing, and medical care will be provided;

(d) the registration of the evacuees;

(e) the providing of facilities for the notification of relatives or friends of evacuees;

(f) the forwarding of evacuees to other areas or the bringing in of additional materials or supplies; and

(g) all other relevant factors.

(2) The plans referred to in subsection (1) must provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and for similar items. The expenditures must be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

Article XI - Implementation

(1) This compact becomes operative immediately upon its enactment into law by any two states. After it becomes operative, this compact is effective in any other state upon its enactment by that other state.

(2) A party state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal does not take effect until 30 days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. Withdrawal does not relieve the withdrawing state from obligations assumed under this compact prior to the effective date of withdrawal.

(3) Authenticated copies of this compact and any supplementary agreements as may be entered into must, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

Article XII - Validity

This compact must be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional or if the applicability of a provision to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances are not affected.

Article XIII - Additional Provisions

This compact does not authorize or permit the use of military force by the national guard of a party state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under 18 U.S.C. 1385.

History: En. Sec. 1, Ch. 175, L. 1999.

10-3-1002. Compact administrator. The administrator of the disaster and emergency services division of the department of military affairs is the administrator of the compact provided for in 10-3-1001.

History: En. Sec. 2, Ch. 175, L. 1999.

10-3-1003. Supplementary agreements. The compact administrator provided for in 10-3-1002 may enter into agreements with other officials in other states, as provided in Article VII of this compact, and in Montana that are necessary to implement the compact.

History: En. Sec. 3, Ch. 175, L. 1999.

Part 11
Interstate Emergency Services

Part Cross-References

Intergovernmental cooperation, Title 10, ch. 3, part 2.

10-3-1101. Short title. This part shall be known and may be cited as the "Interstate Emergency Services Mutual Aid Act".

History: En. Sec. 1, Ch. 5, L. 1989.

10-3-1102. Purpose. It is the purpose of this part to permit one or more fire protection services, emergency medical care providers, or local government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of those services.

History: En. Sec. 2, Ch. 5, L. 1989; amd. Sec. 7, Ch. 292, L. 2007.

10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a governmental fire agency organized under Title 7, chapter 33, or another fire suppression entity organized under the laws of this state, any other state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as provided in this part.

History: En. Sec. 3, Ch. 5, L. 1989; amd. Sec. 8, Ch. 292, L. 2007.

10-3-1104. Authorization to enter agreement — general content — authority. (1) Any one or more fire protection services, emergency medical care providers, or local government subdivisions of this state may enter into a mutual aid agreement with any one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States to provide emergency services to the area covered by the agreement. The agreement must be authorized and approved by the governing body of each party to the agreement that is not an agency of the United States government.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) A mutual aid agreement grants a fire protection service or emergency medical care provider of this state authority to operate outside of the state and grants authority for a fire protection service or emergency medical care provider of another state or the United States to operate within this state as if the fire service or emergency medical care provider were organized and operated under the laws of this state.

History: En. Sec. 4, Ch. 5, L. 1989.

10-3-1105. Detailed content of agreement. The agreement authorized by 10-3-1104 must specify the following:

(1) the purpose of the agreement;

(2) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(3) the duration of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) a provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(6) the exact chain of command or delegation of authority to be followed by party emergency services acting under the provisions of the agreement;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(8) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

History: En. Sec. 5, Ch. 5, L. 1989.

10-3-1106. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the state attorney general.

(2) The attorney general shall approve an agreement submitted under this part unless the attorney general finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If an agreement is disapproved, the attorney general shall provide a detailed, written statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission, it is considered approved.

History: En. Sec. 9, Ch. 5, L. 1989; amd. Sec. 29, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

10-3-1107. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: En. Sec. 10, Ch. 5, L. 1989.

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

10-3-1108 through 10-3-1110 reserved.

10-3-1111. Agreement not to relieve agency of duties. No agreement made under this part may relieve any fire protection service, emergency medical care provider, or local government subdivision of this state of a duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: En. Sec. 7, Ch. 5, L. 1989.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.
Limitations on liability for emergency care, 27-1-714.
Emergencies and special situations, 41-1-405.

10-3-1112. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any fire protection service, emergency medical care provider, or local government subdivision of this state to exercise a power that it is not otherwise authorized to exercise.

History: En. Sec. 8, Ch. 5, L. 1989.

10-3-1113. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more fire protection services, emergency medical care providers, or local government subdivisions of this state and one or more fire protection services, emergency medical care providers, or local government subdivisions of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any fire protection service, emergency medical care provider, or local government subdivision whose default, failure, performance, or other conduct caused or contributed to a liability incurred by the state.

History: En. Sec. 6, Ch. 5, L. 1989.

10-3-1114. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: En. Sec. 12, Ch. 5, L. 1989.

10-3-1115. Authorization to appropriate funds for purpose of agreement. A fire protection service, emergency medical care provider, or local government subdivision of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: En. Sec. 11, Ch. 5, L. 1989.

Part 12

Response to Hazardous Material Incidents

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.
Nuclear regulation, Title 50, ch. 79.
Montana Hazardous Waste and Underground Storage Tank Act, Title 75, ch. 10, part 4.
State participation in CERCLA, Title 75, ch. 10, part 6.
Comprehensive Environmental Cleanup and Responsibility Act, Title 75, ch. 10, part 7.
Western Interstate Nuclear Compact, 90-5-201.

10-3-1201. Short title. This part may be cited as the "Montana Response to Hazardous Material Incidents Act".

History: En. Sec. 1, Ch. 270, L. 1995.

10-3-1202. Purpose. It is the purpose of this part to:

(1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of incidents;

(4) provide for the cooperation of other state agencies and local governments in incident management; and

(5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

History: **En. Sec. 2, Ch. 270, L. 1995.**

10-3-1203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

(9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(10) "Local emergency response authority" means the agency designated by the city, county, or commission to be responsible for the management of an incident at the local level.

(11) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

(12) "Plan" means the Montana incident management and hazardous material response support plan.

(13) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

(14) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.

(15) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment.

History: **En. Sec. 3, Ch. 270, L. 1995; amd. Sec. 2, Ch. 520, L. 1999.**

10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 29 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire services training school, the emergency medical services and trauma systems section of the public health and safety division in the department of public health and human services, the department of fish, wildlife, and parks, the department of agriculture, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, Montana's petroleum industry, Montana's insurance industry, the university system, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. At least one representative must be a member of a local emergency planning committee. Members of the commission serve terms of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state hazardous material incident response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part.

History: **En. Sec. 4, Ch. 270, L. 1995; amd. Sec. 1, Ch. 45, L. 1999; amd. Sec. 1, Ch. 37, L. 2003; amd. Sec. 13, Ch. 354, L. 2005; amd. Sec. 7, Ch. 44, L. 2007; amd. Sec. 1, Ch. 67, L. 2007.**

10-3-1205 and 10-3-1206 reserved.

10-3-1207. Commission budget and expenditures. (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds to be used at the discretion of the commission for programs related to the plan.

History: **En. Sec. 5, Ch. 270, L. 1995.**

10-3-1208. Local emergency response authorities — designation. (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency response authority and participate in the local emergency operations plan for incident response.

(4) If an incident occurs in an area in which local emergency response authority has not been designated, the presiding officer of the board of county commissioners must be the local emergency response authority for the incident for the purposes of this part.

History: **En. Sec. 6, Ch. 270, L. 1995.**

10-3-1209. Local emergency response authorities — powers and duties. (1) Every local emergency response authority designated pursuant to this part shall respond to incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to an incident that initially occurs within its jurisdiction but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall define in writing its incident management system and specifically define the agency that will be the incident commander.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed.

History: **En. Sec. 7, Ch. 270, L. 1995.**

10-3-1210. Controlling provisions for state of emergency — liability of responsible persons. In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as the result of an incident, the provisions of 10-3-303 govern.

History: **En. Sec. 8, Ch. 270, L. 1995.**

10-3-1211. Notification of release. (1) A person responsible for reporting a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of environmental quality of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed $10,000 for each day the violation continues to a maximum of $100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

History: **En. Sec. 9, Ch. 270, L. 1995.**

10-3-1212 and 10-3-1213 reserved.

10-3-1214. Right to reimbursement. (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in this part and only if adequate funds are available.

History: **En. Sec. 10, Ch. 270, L. 1995.**

10-3-1215. Deficiency warrants for reimbursement of response costs. (1) (a) The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken pursuant to this part.

(b) The costs of routine firefighting procedures are not reimbursable costs under this part.

(2) Reimbursement must be in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and nonappealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

History: **En. Sec. 11, Ch. 270, L. 1995.**

10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, the state hazardous material incident response team, and the local emergency response authority, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the

Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

History: En. Sec. 12, Ch. 270, L. 1995; amd. Sec. 3, Ch. 520, L. 1999.

Cross-References

Costs, Title 25, ch. 10.
Availability of remedies — liability, Title 27, ch. 1.
Nuisances, Title 27, ch. 30.
Environmental contingency account, 75-1-1101.

10-3-1217. Liability of persons and response team members rendering assistance. (1) The following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material:

(a) the state or a political subdivision of the state;

(b) the commission;

(c) the local emergency response authority;

(d) the state hazardous material incident response team;

(e) a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency response authority for emergency response activities; and

(f) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), except for willful misconduct or gross negligence.

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the state hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location.

History: En. Sec. 13, Ch. 270, L. 1995; amd. Sec. 4, Ch. 520, L. 1999; amd. Sec. 1, Ch. 517, L. 2003.

10-3-1218. Required assistance in hazardous material incident. An owner or agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person transporting a hazardous material involved in an incident, and a person owning or occupying property involved in an incident shall assist the state as requested by the incident commander in responding to an emergency situation associated with the incident as may be necessary to address an acute threat to public health or safety or to the environment until the incident commander declares that the emergency situation is over.

History: En. Sec. 14, Ch. 270, L. 1995.

Part 13
Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act

10-3-1301. Short title. This part may be cited as the "Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act".

History: En. Sec. 1, Ch. 560, L. 2003.

10-3-1302. Purpose. The purpose of this part is to enhance the safety of Montana's citizens by requiring a special permit, inspections, and monitoring of shipments of high-level radioactive waste and transuranic waste that travel through Montana by motor carrier or railroad.

History: En. Sec. 2, Ch. 560, L. 2003.

10-3-1303. Definitions. As used in this part, the following definitions apply:

(1) "High-level radioactive waste" means:

(a) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste that contains fission products in sufficient concentrations;

(b) irradiated reactor fuel; or

(c) other highly radioactive waste material that the U.S. nuclear regulatory commission has determined by rule requires permanent isolation.

(2) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(3) "Transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram or in other concentrations that the U.S. nuclear regulatory commission may prescribe.

History: En. Sec. 3, Ch. 560, L. 2003.

10-3-1304. Radioactive waste transportation monitoring, emergency response, and training account — purpose — disbursement. (1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to 10-3-1307 may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill, or other related emergency occurs.

History: En. Sec. 4, Ch. 560, L. 2003; amd. Sec. 14, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 deleted former (3) that read: "(3) Prior to rulemaking provided for under 10-3-1309(3), the disaster and emergency services division of the department of military affairs shall coordinate with the public service commission and the department of transportation to provide to an appropriate legislative interim committee prior to the 59th legislature a plan that prioritizes prospective disbursement of money in the account described in subsection (1)." Amendment effective October 1, 2009.

10-3-1305. Responsibilities of owner. (1) Prior to shipping high-level radioactive waste or transuranic waste through the state, an owner and the originating shipper if not the owner shall provide to the transporter and to the disaster and emergency services division, within limits set by the regulating federal authority:

(a) a shipment description, including type of waste;

(b) a safety plan, which must be submitted to the disaster and emergency services division and which must include:

(i) the specifications of casks being used to transport the radioactive waste, including how the casks have been tested and certified;

(ii) proof of training of an owner's escorts for emergency situations, including accidents;

(iii) the intended route;

(iv) all safety precautions to be taken to prevent an accident; and

(v) emergency plans for threats to safety;

(c) proof of insurance or an indemnity bond. If the owner and the originating shipper if not the owner is covered by a federal insurance program for the transport of radioactive material, proof of coverage by that program is sufficient. If a federal insurance program does not cover the owner, the owner shall provide proof of a bond or indemnity insurance coverage as required by the regulating federal authority.

(d) proof of a radiotelephone or other working, two-way voice communications device approved by the nuclear regulatory commission for the main transporter and for each escort vehicle.

(2) An owner or the originating shipper if not the owner may not transport through the state any high-level radioactive waste or transuranic waste that is not properly sealed in a cask approved by the regulating federal authority.

History: **En. Sec. 5, Ch. 560, L. 2003.**

10-3-1306. Transportation of radioactive waste through state — notification — responsibilities of division. (1) A person or entity may not ship high-level radioactive waste or transuranic waste through the state by rail or motor carrier unless the person or entity first notifies the disaster and emergency services division and the department of transportation, pays the appropriate fees, and obtains a permit.

(2) Upon receiving the notification required under subsection (1), the disaster and emergency services division shall notify the highway patrol, the public service commission, or other agencies as appropriate.

(3) The disaster and emergency services division shall reimburse the highway patrol for expenses incurred in monitoring or escorting motor carriers, as provided in 10-3-1308, from money collected in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

History: **En. Sec. 6, Ch. 560, L. 2003.**

10-3-1307. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of $2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of $4,500 must be assessed for the first cask designed for transport by rail and a fee of $3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and 61-3-321(13) and 61-10-127 do not apply.

History: **En. Sec. 7, Ch. 560, L. 2003; amd. Sec. 8, Ch. 596, L. 2005.**

10-3-1308. Responsibilities of highway patrol — monitoring of motor carriers — billing. (1) After receiving notification from the disaster and emergency services division that a motor carrier will be transporting high-level radioactive waste or transuranic waste through the state, the highway patrol shall establish a plan for monitoring the shipment.

(2) Monitoring a shipment by motor carrier may include escorting the vehicle through the state, establishing checkpoints, shadowing the vehicle, electronically following the vehicle's movements, or any other method determined by the highway patrol to be effective and safe.

(3) The highway patrol shall coordinate inspection of the motor carrier with the department of transportation's motor carrier services division.

(4) The highway patrol shall determine the cost that it has incurred in monitoring each motor carrier and shall submit a bill for reimbursement to the disaster and emergency services division for payment out of the account established in 10-3-1304(1) according to the priorities established in 10-3-1304(3).

(5) The routing of the transport by motor carrier of high-level radioactive waste and transuranic waste must be determined by the department of transportation and the appropriate regulating federal authority.

History: En. Sec. 8, Ch. 560, L. 2003.

10-3-1309. Responsibilities of public service commission — inspection of rails and trains — agreements with neighboring states and provinces — rulemaking. (1) After receiving notification from the disaster and emergency services division that high-level radioactive waste or transuranic waste will be shipped by railroad through the state, the public service commission shall establish a plan for inspecting the rails and the trains, as authorized in Title 69, chapter 14, part 2, that will be involved in the transportation of the waste. The plan must include but is not limited to:

(a) coordination with the federal railroad administration on track and rolling stock inspections;

(b) inspection and approval by a federally certified inspector no later than 1 week prior to shipment; and

(c) a requirement that trains carrying radioactive waste or transuranic waste may not travel at greater than the speed required by federal regulations.

(2) The public service commission may enter into reciprocal agreements with adjacent states and bordering Canadian provinces that Montana's inspectors may inspect trains while they are stopped in those states or provinces before they cross the Montana border.

(3) The public service commission shall, in cooperation with the department of transportation, the disaster and emergency services division, and the highway patrol, establish rules to carry out the provisions of this part. The rules must address:

(a) the process by which local authorities will be notified when a motor carrier or a train carrying high-level radioactive waste or transuranic waste is approaching their jurisdictions;

(b) which local authorities will receive notification;

(c) the process by which local governments and local emergency response entities may apply for and receive training and reimbursement money from the radioactive waste transportation monitoring, emergency response, and training account, as provided in 10-3-1304;

(d) the criteria for qualifying to receive money from the account;

(e) acceptable means for monitoring a train that is carrying high-level radioactive waste or transuranic waste; and

(f) other processes or procedures that the public service commission, the department of transportation, the disaster and emergency services division, and the highway patrol determine are necessary to efficiently carry out the provisions of this part and to ensure the safe transportation of high-level radioactive waste or transuranic waste through Montana.

History: En. Sec. 9, Ch. 560, L. 2003.

10-3-1310. Penalty. An owner found to be in violation of the provisions of 10-3-1305 through 10-3-1309 shall be fined an amount of not more than $100,000 for each violation. In the case of an accidental spill of a cask containing transuranic waste or leakage of high-level radioactive waste, the penalty is in addition to any other liability. The department of justice is responsible for imposing and determining the amount of a fine.

History: En. Sec. 10, Ch. 560, L. 2003.

CHAPTER 4
STATE EMERGENCY TELEPHONE SYSTEM

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Chapter Cross-References

State government information technology and internet privacy, Title 2, ch. 17, part 5.
Regulation of communication utilities, Title 69, ch. 3, 6.

Part 1
Emergency Telephone System Plans

10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" means the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders.

(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).

(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-103 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

(4) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

(6) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(8) "Emergency" means an event that requires dispatch of a public or private safety agency.

(9) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(10) "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).

(11) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.

(12) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

(13) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection (13)(a).

(14) "Federal communications commission order" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.

(15) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(16) "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

(17) "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information and location information to the public safety answering point for wireless calls.

(18) "Place of primary use" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

(19) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(20) "Provider" means a public utility, a cooperative telephone company, or any other entity that provides telephone exchange access services.

(21) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(22) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(23) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(24) "Subscriber" means an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services.

(25) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other provider of emergency services.

(26) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

(27) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.

(28) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state.

History: En. Sec. 1, Ch. 635, L. 1985; amd. Sec. 30, Ch. 370, L. 1987; amd. Sec. 46, Ch. 42, L. 1997; amd. Sec. 1, Ch. 448, L. 1997; amd. Sec. 1, Ch. 304, L. 2007; amd. Sec. 15, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in definition of basic 9-1-1 service near middle substituted "10-4-103" for "10-4-102"; and in definition of transfer near end after "public safety" deleted "answering". Amendment effective October 1, 2009.

10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

(c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

(d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems and in implementing wireless enhanced 9-1-1 services.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.

(3) The department may request information from a specific 9-1-1 jurisdiction as determined necessary for the department to fulfill its duties under this chapter. If a 9-1-1 jurisdiction does not comply with the request, the department may suspend distributions to the 9-1-1 jurisdiction as provided in 10-4-302(4).

History: En. Sec. 3, Ch. 635, L. 1985; amd. Sec. 20, Ch. 112, L. 1991; amd. Sec. 16, Ch. 349, L. 1993; amd. Sec. 2, Ch. 448, L. 1997; amd. Sec. 10, Ch. 36, L. 2005; amd. Sec. 2, Ch. 304, L. 2007; amd. Sec. 1, Ch. 111, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 111 inserted (3) relating to request by and providing of information to the department. Amendment effective July 1, 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-4-103. Emergency telephone system requirements. (1) Every public and private safety agency in this state may establish or participate in a basic or enhanced 9-1-1 system.

(2) A basic 9-1-1 system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.

(3) An enhanced 9-1-1 system must include, in addition to the requirements for a basic 9-1-1 system:

(a) automatic number identification that automatically identifies and displays the calling telephone number at the public safety answering point; and

(b) automatic location identification that automatically identifies and displays the address of the calling telephone at the public safety answering point.

(4) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number.

History: En. Sec. 2, Ch. 635, L. 1985; amd. Sec. 3, Ch. 448, L. 1997.

10-4-104. Agreements among safety agencies for rendering emergency services. (1) Public or private safety agencies sharing common boundaries may enter into agreements which provide that an emergency unit dispatched by an emergency telephone system established in accordance with 10-4-103 must render emergency services without regard to jurisdictional boundaries.

(2) A public safety agency with jurisdictional responsibilities must in all cases be notified by the public safety answering point of a request for service in the agency's jurisdiction.

History: En. Sec. 7, Ch. 635, L. 1985.

10-4-105 through 10-4-110 reserved.

10-4-111. Submission of preliminary plans for 9-1-1 jurisdictions — review — cost estimates. (1) A 9-1-1 jurisdiction may submit a preliminary plan for establishing a basic or enhanced 9-1-1 system in accordance with 10-4-103 to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The department shall review the preliminary plan for compliance with 10-4-103 and rules adopted pursuant to 10-4-102 and report its approval or disapproval to the 9-1-1 jurisdiction within 90 days of receipt of the plan.

(3) A provider of telephone service in the 9-1-1 jurisdiction's service area shall, within 90 days of receipt of the plan, provide the 9-1-1 jurisdiction with a good faith estimate of the cost to the 9-1-1 jurisdiction for implementing the plan.

History: En. Sec. 4, Ch. 635, L. 1985; amd. Sec. 4, Ch. 448, L. 1997.

10-4-112. Submission and approval of final plans — exception. (1) A 9-1-1 jurisdiction shall submit a proposed final plan for establishing a basic or enhanced 9-1-1 system pursuant to 10-4-103 within 1 year from receipt of the department's approval of its preliminary plan to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) In addition to other matters required by 10-4-103, the final plan must include a description of all capital and recurring costs for the proposed basic or enhanced 9-1-1 system.

(3) The department shall determine whether the final plan complies with 10-4-103 and rules adopted pursuant to 10-4-102. Subject to 10-4-113, if the department determines that the plan complies, it shall approve the plan, or if the department determines that the plan does not comply, it shall disapprove the plan. The department shall inform the 9-1-1 jurisdiction of its decision within 180 days of receipt of the plan. In any statement approving a final plan, the department shall indicate a timetable in which the provider shall undertake necessary telephone system conversions. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.

History: En. Sec. 5, Ch. 635, L. 1985; amd. Sec. 5, Ch. 448, L. 1997.

10-4-113. Requirement for approval of final plan — department to insure compliance. The department may not approve the preliminary or final plan for basic or enhanced 9-1-1 service within a 9-1-1 jurisdiction unless the plan is accompanied by a written approval from the governing bodies of all participating public and private safety agencies included in the 9-1-1 jurisdiction.

History: En. Sec. 6, Ch. 635, L. 1985; amd. Sec. 6, Ch. 448, L. 1997.

10-4-114. Rulemaking authority. The department may adopt rules to implement the provisions of this chapter. The rules may include but are not limited to:

(1) establishing procedures to evaluate and make determinations on requests for a variation of the basic or enhanced 9-1-1 service;

(2) establishing evaluation criteria for basic and enhanced 9-1-1 systems plans;

(3) establishing requirements for program participation by public and private safety agencies;

(4) establishing guidelines for the distribution of funds; and

(5) establishing requirements regarding applications for reimbursement for allowable costs to wireless providers for enabling wireless enhanced 9-1-1 services.

History: En. Sec. 1, Ch. 184, L. 2003; amd. Sec. 3, Ch. 304, L. 2007.

10-4-115. Submission of phase I and phase II wireless notification by wireless provider. (1) A wireless provider must meet the following requirements to be eligible for wireless cost recovery:

(a) Within 30 days of receipt of a formal phase I and phase II request from a public safety answering point, the wireless provider shall submit to the department a notification stating the anticipated date of deployment and the number of subscribers, based on billing addresses, for the 9-1-1 jurisdiction.

(b) The department shall first determine that the wireless provider is providing phase I and phase II functionality to the public safety answering point. The wireless provider is responsible for notifying the department of the date of deployment and proof of acceptance tests.

(2) A 9-1-1 jurisdiction must be ready to provide phase I and phase II wireless service and have submitted a phase I and phase II wireless request to the wireless providers providing service in the jurisdiction's area.

History: En. Sec. 4, Ch. 304, L. 2007.

10-4-116 through 10-4-120 reserved.

10-4-121. Pay phones to be converted to allow emergency calls without charge. Every provider of telephone service or other owner of a pay station telephone in an area served by an emergency telephone system established pursuant to 10-4-103 must convert every pay station telephone to permit dialing 9-1-1 or the telephone company operator without deposit of a coin or other charge to the caller. Conversion must be completed by or before the time the emergency telephone system is operational.

History: En. Sec. 8, Ch. 635, L. 1985.

10-4-122 through 10-4-124 reserved.

10-4-125. Submission of revised plan for conversion from basic 9-1-1 to enhanced 9-1-1. (1) A jurisdiction intending to implement an enhanced 9-1-1 system shall submit an amended plan for establishing an enhanced 9-1-1 system to:

(a) every public and private safety agency in the 9-1-1 jurisdiction;

(b) the department; and

(c) all providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The amended plan must include:

(a) a description of all capital and recurring costs for the proposed enhanced 9-1-1 system;

(b) the proposed schedule for implementation of the enhanced 9-1-1 system;

(c) the proposed expenditures for equipment and software upgrades;

(d) a plan for maintaining all automatic number identification and all automatic location identification databases; and

(e) a plan for 9-1-1 dispatcher training that must include, at a minimum:

(i) basic telecommunicator certification awarded upon successful completion of the basic telecommunicator class offered through the Montana law enforcement academy;

(ii) emergency medical dispatch certification awarded upon successful completion of one of the emergency medical dispatch programs that provide dispatch-specific medical training and training and practice in the use of written or automated medical dispatch protocols; or

(iii) training that includes handling 9-1-1 emergency telephone calls and relaying information to the appropriate responder or dispatch agency.

(3) (a) The department shall determine whether the enhanced 9-1-1 plan complies with the provisions of this part, including rules adopted pursuant to 10-4-102, and shall inform the 9-1-1 jurisdiction of its determination within 180 days of receipt of the plan.

(b) If the department approves an enhanced 9-1-1 plan, the department shall indicate a timetable within which the provider shall undertake necessary conversions to dedicated 9-1-1 circuits. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.

(4) If enhanced 9-1-1 service has been included as part of an approved final plan for basic 9-1-1 service, the jurisdiction is not required to submit an amended plan for enhanced 9-1-1 service.

History: En. Sec. 7, Ch. 448, L. 1997.

10-4-126. Dedicated 9-1-1 telephone facilities to be provided — capabilities. Every provider of telephone service in an area served by an emergency telephone system established pursuant to 10-4-103 shall provide dedicated 9-1-1 telephone facilities capable of providing automatic number identification to the public safety answering point. The provision of facilities and services required under this section must be accomplished according to a plan, including a timetable, approved pursuant to 10-4-111.

History: En. Sec. 8, Ch. 448, L. 1997.

Part 2
Funding

10-4-201. Fees imposed for 9-1-1 services. (1) Except as provided in 10-4-202:

(a) for basic 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services;

(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; and

(c) for wireless enhanced 9-1-1 services, a fee of 50 cents a month per access line or subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.

(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

History: En. Sec. 9, Ch. 635, L. 1985; amd. Sec. 9, Ch. 448, L. 1997; amd. Sec. 5, Ch. 304, L. 2007.

Cross-References

Cooperatives subject to fee, 35-18-503.

10-4-202. Exemptions from fees imposed. The fees imposed by 10-4-201 do not apply to:

(1) services that the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana; or

(2) amounts paid by depositing coins in a public telephone.

History: En. Sec. 10, Ch. 635, L. 1985; amd. Sec. 10, Ch. 448, L. 1997.

10-4-203. Provider required to maintain record of collections. Every provider responsible for the collection of the fee imposed by 10-4-201 shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.

History: **En. Sec. 11, Ch. 635, L. 1985.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-4-204. Deadlines for filing returns. (1) The provider collecting the fee under 10-4-201 must file a return with the department of revenue on or before the last day of the month following the end of each calendar quarter, reporting the amount of fee due on exchange access line services during the quarter. Returns are subject to the penalty for false swearing provided in 45-7-202.

(2) When a return of the fee is required, the provider required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider shall pay the fee based on the net amount billed for the exchange access service fee during the quarter.

(4) As used in this section, the "net amount billed for the exchange access service fee" equals the gross amount billed for such service, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

History: **En. Sec. 12, Ch. 635, L. 1985.**

10-4-205. Refund to provider for excess payment of fee. If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may not be made to a provider who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates.

History: **En. Sec. 13, Ch. 635, L. 1985; amd. Sec. 1, Ch. 229, L. 1993.**

10-4-206. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 11, Ch. 676, L. 1991.**

Cross-References

Returns and payment of tax — penalty and interest — refunds — credits, 15-30-2602.

10-4-207. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

10-4-208 through 10-4-210 reserved.

10-4-211. Provider required to hold fee in trust for state — penalty and interest. (1) Every provider required to collect the fee imposed by 10-4-201 holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by 10-4-204.

(2) (a) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of payment.

(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.

(3) (a) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7.

History: En. Sec. 14, Ch. 635, L. 1985; amd. Secs. 1, 19, Ch. 676, L. 1991.

Cross-References

Trust Code, Title 72, ch. 33 through 36.

10-4-212. Provider considered a taxpayer under provisions for fee. Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to this part as if the fee were a tax imposed upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. Any amount collected and required to be remitted to the department of revenue is considered a tax upon the provider required to collect it, and that provider is considered a taxpayer.

History: En. Sec. 15, Ch. 635, L. 1985; amd. Sec. 19, Ch. 10, L. 1993.

Part 3
Emergency Telephone System Account — Usage

10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:

(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a);

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b); and

(c) an account for all fees collected for wireless enhanced 9-1-1 services pursuant to 10-4-201(1)(c). The money is allocated as follows:

(i) 50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and

(ii) 50% of the account must be deposited in an account for distribution to wireless providers.

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 2.74% of the money received pursuant to 10-4-201 must be deposited in an account in the state special revenue fund to be used for the administration of this chapter. Any remaining funds at the end of a fiscal year must be equally distributed to each of the four accounts provided for in subsection (1).

(3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

(4) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(5) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302, 10-4-311, and 10-4-313, is statutorily appropriated, as provided in 17-7-502, to the department.

(6) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose.

History: En. Sec. 16, Ch. 635, L. 1985; amd. Sec. 2, Ch. 628, L. 1989; amd. Sec. 47, Ch. 42, L. 1997; amd. Sec. 5, Ch. 422, L. 1997; amd. Sec. 11, Ch. 448, L. 1997; amd. Sec. 5, Ch. 389, L. 1999; amd. Sec. 1, Ch. 41, L. 2001; amd. Sec. 6, Ch. 304, L. 2007; amd. Sec. 1, Ch. 110, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 110 in (2) in second sentence decreased the amount to be deposited from 3.74% to 2.74%, after "deposited in" substituted "an account in the special revenue fund to be used for the administration of this chapter" for "the state general fund", and inserted third sentence regarding distribution of funds remaining at the end of a fiscal year. Amendment effective July 1, 2009.

Cross-References

Fund structure, 17-2-102.

10-4-302. Distribution of basic 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire basic 9-1-1 account. The distributions must be made for the costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fees imposed by 10-4-201;

(b) modification of central office switching and trunking equipment for emergency telephone service only; and

(c) conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs incurred in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan

the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan, is not using funds in the manner prescribed in 10-4-303, or has failed to provide information as provided in 10-4-102(3), the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until the department determines that the jurisdiction is complying with the approved plan and fund usage limitations or has provided the requested information.

History: En. Sec. 17, Ch. 635, L. 1985; amd. Sec. 1, Ch. 153, L. 1991; amd. Sec. 6, Ch. 422, L. 1997; amd. Sec. 12, Ch. 448, L. 1997; amd. Sec. 2, Ch. 111, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 111 in (4) in first sentence inserted reference to failure to provide information and in second sentence at end inserted reference to provision of requested information; deleted former (5) that read: "(5) The department shall distribute any balance in the basic 9-1-1 account on July 1, 1998, on a per capita basis to those 9-1-1 jurisdictions that have approved final plans filed with the department as required by 10-4-112"; and made minor changes in style. Amendment effective July 1, 2009.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

10-4-303. Limitation on use of basic 9-1-1 funds. Money received under subsection (3) of 10-4-302 may be used only to pay for installing, operating, and improving a basic 9-1-1 emergency telephone system. Money not necessary for immediate use may be invested by the city or county. The income from the investments may be used only for the purposes described in this section.

History: En. Sec. 18, Ch. 635, L. 1985; amd. Sec. 13, Ch. 448, L. 1997.

10-4-304 through 10-4-310 reserved.

10-4-311. Distribution of enhanced 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account for costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fee imposed by 10-4-201(1)(b); and

(b) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs described in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid:

(a) for each fiscal year through the fiscal year ending June 30, 2007:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and

(b) for fiscal years beginning after June 30, 2007, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in 10-4-312, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations.

History: En. Sec. 14, Ch. 448, L. 1997; amd. Sec. 6, Ch. 389, L. 1999.

10-4-312. Limitation on use of enhanced 9-1-1 funds. (1) Money received under 10-4-311(3) or (4) may be used only to pay for installing enhanced 9-1-1 features or for operating and improving an emergency telephone system using 9-1-1 service once the plan for converting to enhanced 9-1-1 has been approved.

(2) With department approval, money received under 10-4-311(3) or (4) may be used to pay for basic 9-1-1 service. The 9-1-1 jurisdiction shall submit a request for an exception under this subsection to the department based on a demonstrated hardship, including geographical constraints, funding limitations, or absence of technical capability or capacity.

(3) Money not necessary for immediate use may be invested by the city or county. The income from the investments may be used only for the purposes described in this section.

History: En. Sec. 15, Ch. 448, L. 1997.

10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

History: En. Sec. 7, Ch. 304, L. 2007; amd. Sec. 3, Ch. 111, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 111 in (1)(a)(ii) and (2)(a)(ii) substituted "allocated" for "distributed"; inserted (1)(a)(iii) and (2)(a)(iii) requiring adjustment of allocations prior to distribution; and made minor changes in style. Amendment effective July 1, 2009.

TITLES 11 AND 12

RESERVED

TITLE 13
ELECTIONS

Ch.
1. General Provisions.
2. Registration of Electors.
3. Precincts and Polling Places.
4. Election Judges.
Chapters 5 through 9 reserved.
10. Primary Elections and Nominations.
11. Election Proclamation. Repealed.
12. Election Supplies and Ballots.
13. Election Procedure.
14. Nonpartisan Elections.
15. Canvassing, Returns, and Certificates.
16. Recounts and Tie Votes.
17. Voting Systems.
18. Electronic Voting Systems. Repealed.
19. Mail Ballot Elections.
Chapter 20 reserved.
21. Montana Absent Uniformed Services and Overseas Elector Voting Act.
22. Youth Voting Act.
Chapters 23 and 24 reserved.
25. Elections for Federal Office.
26. Convention to Ratify Amendments to United States Constitution.
27. Ballot Issues.
Chapters 28 through 34 reserved.
35. Election and Campaign Practices and Criminal Provisions.
36. Contests.
37. Control of Campaign Practices.
38. Political Parties.

Title Cross-References

Right of suffrage, Art. II, sec. 13, Mont. Const.
Right of initiative and referendum, Art. III, sec. 4 through 7, Mont. Const.
Suffrage and elections, Art. IV, Mont. Const.
Secret ballot, Art. IV, sec. 1, Mont. Const.; 13-1-102.
Eligibility for public office, Art. IV, sec. 4, Mont. Const.
Districting and apportionment, Art. V, sec. 14, Mont. Const.; Title 5, ch. 1, part 1.
Election of executive officers, Art. VI, sec. 2, Mont. Const.
Public office — candidacy while holding other public office, Art. VI, sec. 5, Mont. Const.
Vacancy in Executive Branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.
Election of judicial officers, Art. VII, sec. 8, Mont. Const.
Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.
Constitutional revision by initiative and referendum, Art. XIV, sec. 8 and 9, Mont. Const.
General qualifications of public officers, 2-16-102.
Residence of public officers, 2-16-111.
Accession to office, Title 2, ch. 16, part 2.
Vacancy and succession of public officers, Title 2, ch. 16, part 5.
Montana Recall Act, Title 2, ch. 16, part 6.
Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.
Election of Supreme Court Justices, Title 3, ch. 2, part 1.
Election of District Court Judges, Title 3, ch. 5, part 2.
Election of Municipal Court Judges, Title 3, ch. 6, part 2.
Election of Justices of the Peace, Title 3, ch. 10, part 2.
Vacancy in Legislature, Title 5, ch. 2, part 4.
Time of election of officers of reclassified municipality, 7-1-4116.
Election on question of creating new county, Title 7, ch. 2, part 22.
Election on removal of county seat, Title 7, ch. 2, part 26.
Election on abandonment and consolidation of counties, 7-2-2709 through 7-2-2713.
Election on question of organization of municipality, Title 7, ch. 2, part 41.
Annexation and exclusion, Title 7, ch. 2, parts 42 through 48.
Election on disincorporation, Title 7, ch. 2, part 49.
Election on alteration of form of local government, Title 7, ch. 3, part 1.
Election on consolidation of city-county government, Title 7, ch. 3, part 12.
Election on formation of commission form of municipal government, Title 7, ch. 3, part 42.
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CHAPTER 1
GENERAL PROVISIONS

Part 1 — General Provisions

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Part 1
General Provisions

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(22) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(23) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(24) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(25) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(26) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(27) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(28) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(29) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(30) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(31) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(32) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(33) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(34) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(35) "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

(36) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot.

History: Ap. p. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977; Sec. 23-2601, R.C.M. 1947; Ap. p. Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977; Sec. 23-4777, R.C.M. 1947; R.C.M. 1947, 23-2601, 23-4777; amd. Sec. 1, Ch. 571, L. 1979; amd. Sec. 1, Ch. 603, L. 1983; amd. Sec. 31, Ch. 370, L. 1987; amd. Sec. 1, Ch. 339, L. 1989; amd. Sec. 1, Ch. 390, L. 1993; amd. Sec. 2, Ch. 246, L. 1997; amd. Sec. 1, Ch. 208, L. 1999; amd. Sec. 1, Ch. 401, L. 2001; amd. Secs. 5, 93(1), Ch. 414, L. 2003; amd. Sec. 1, Ch. 475, L. 2003; amd. Sec. 1, Ch. 273, L. 2007; amd. Sec. 3, Ch. 481, L. 2007; amd. Sec. 10, Ch. 89, L. 2009; amd. Sec. 1, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 89 inserted definition of random-sample audit; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 297 inserted definitions of mail ballot election, place of deposit, polling place election, and voted ballot; in definition of active elector at end substituted "whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313" for "who voted in the previous federal general election and whose name is on the active list"; in definition of candidate in (b)(iii) substituted "or" for "and"; in definition of election administrator near end after "elections" inserted "not administered by the county"; in definition of inactive elector near middle substituted "failed to respond to confirmation notices" for "failed to vote in the preceding federal general election" and at end inserted "or 13-19-313"; in definition of inactive list at end inserted "or 13-19-313"; in definition of provisional ballot substituted "identity or eligibility" for "identity and eligibility"; in definition of provisionally registered elector after "whose" inserted "identity or"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Elections on initiatives and referenda, Art. III, sec. 6, Mont. Const.
Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.
Amendment by initiative, Art. XIV, sec. 9, Mont. Const.
People as a political body defined, 1-1-401.
Electors eligible to vote in election for fire district board of trustees, 7-33-2106.
Definition of qualified elector for conservation district elections, 76-15-103(8).
Elector requirement in election to create conservation district project area, 76-15-606.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973; R.C.M. 1947, 23-2602.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.
Secrecy required when aiding disabled elector, 13-13-119.
Voting systems to allow elector to vote in secrecy, 13-17-103.
Criminal provisions relating to secrecy, 13-35-201.

13-1-103. Determination of winner. The individual receiving the highest number of valid votes for any office at an election is elected or nominated to that office.

History: En. Sec. 3, Ch. 368, L. 1969; R.C.M. 1947, 23-2603; amd. Sec. 2, Ch. 571, L. 1979; amd. Sec. 6, Ch. 414, L. 2003.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.
Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by Governor, 2-15-401.

13-1-104. Times for holding general elections. (1) (a) Except as provided in subsection (1)(b), a general election must be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(b) A special election may be held on an earlier date provided in a law authorizing a special statewide election on an initiative or referendum pursuant to Article III, section 6, of the Montana constitution.

(2) A general election must be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually must be held on school election day, the first Tuesday after the first Monday of May of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day, as provided in subsection (3), or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

History: En. Sec. 4, Ch. 368, L. 1969; R.C.M. 1947, 23-2604; amd. Sec. 4, Ch. 571, L. 1979; amd. Sec. 5, Ch. 27, L. 1981; amd. Sec. 2, Ch. 603, L. 1983; amd. Sec. 2, Ch. 216, L. 1987; amd. Sec. 1, Ch. 644, L. 1987; amd. Sec. 1, Ch. 514, L. 1999; amd. Sec. 2, Ch. 475, L. 2003.

Cross-References

Vote on initiative and referendum measures, Art. III, sec. 6, Mont. Const.
Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.
Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.
General election day legal holiday, 1-1-216.
Vacancies in Senate, 5-2-406, 5-2-407.
Election on question of creating new county, 7-2-2215.
Election on question of annexation by petition, 7-2-4602.
Election of City Judge, 7-3-1342, 7-3-4462.
Time for election of directors of county water and sewer districts, 7-13-2236.
Election of local port authority commissioners, 7-14-1106.
Vote on creation of municipal housing authority, 7-15-4408.
Election on tax levy for county parks and other facilities, 7-16-2102.
Time for election of trustees of fire district, 7-33-2106.
Manner of conducting general elections for political subdivisions required to hold annual elections, 13-1-401.
Election day school holiday under certain circumstances, 20-1-305.
Election day as bank holiday, 32-1-481.
Time for election of commissioners of irrigation districts, 85-7-1702.
Time for election of commissioners of drainage districts, 85-8-302.

13-1-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 56, Ch. 368, L. 1969; R.C.M. 1947, 23-3301.

13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polling place must be closed immediately.

(3) If an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106.

History: En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977; R.C.M. 1947, 23-2605; amd. Sec. 5, Ch. 571, L. 1979; amd. Sec. 1, Ch. 676, L. 1983; amd. Sec. 1, Ch. 57, L. 1985; amd. Sec. 1, Ch. 360, L. 2007.

13-1-107. Times for holding primary elections. (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.

History: En. Sec. 3, Ch. 571, L. 1979; amd. Sec. 3, Ch. 216, L. 1987.

Cross-References

Election on question of creating new county, 7-2-2215.
Presidential preference primary to be held in conjunction with state primary, 13-10-401.

13-1-108. Notice of special elections. Notice of any special election must be broadcast or published at least three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this section are fulfilled upon the third publication or broadcast of the notice.

History: En. Sec. 6, Ch. 571, L. 1979; amd. Sec. 2, Ch. 273, L. 2007; amd. Sec. 2, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in first sentence near beginning after "must be" inserted "broadcast or" and at end inserted "using the method the election administrator believes is best suited to reach the largest number of potential electors"; at end of second sentence inserted "or broadcast of the notice"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Elections on initiatives and referendums, Art. III, sec. 6, Mont. Const.
Notice of recall election, 2-16-622, 2-16-631.
Notice of election on question of creating new county, 7-2-2215.
Notice of election on question of organization of new municipality, 7-2-4104, 7-2-4105.
Notice of election on question of annexation by petition, 7-2-4603.
Notice of election on question of disincorporation of municipality, 7-2-4903.
Notice of election on question of city-county consolidation, 7-3-1204.
Notice of election to elect members of commission of city-county government, 7-3-1208.
Notice of election on question of granting municipal franchise, 7-5-4322.
Notice of election on question of resort community tax, 7-6-1504.
Notice of election on question of issuance of county bonds, 7-7-2229.
Notice of election on question of issuance of municipal bonds, 7-7-4227.
Notice of election on question of creation of county water and sewer district, 7-13-2210.
Notice of election on question of incurring indebtedness for county water and sewer district, 7-13-2324.
Notice of irrigation district special election, 85-7-1712.

13-1-109. Election records open to public. Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

History: En. Sec. 15, Ch. 571, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

13-1-110 reserved.

13-1-111. Qualifications of voter. (1) A person may not vote at elections unless the person is:

(a) registered as required by law;

(b) 18 years of age or older;

(c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and

(d) a citizen of the United States.

(2) A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.

(3) A person adjudicated to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973; R.C.M. 1947, 23-2701; amd. Sec. 3, Ch. 273, L. 2007.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.
Rules for determining residence generally, 1-1-215.
Electors as part of political body, 1-1-401.
Elections on questions of municipal indebtedness — qualifications, 7-7-4103.
State residency not required to vote on question of creation of county water/sewer district, 7-13-2212.
Firefighters — qualifications for employment, 7-33-4107.
Registration generally, Title 13, ch. 2.
Change of residence to another county within 45 days of election, 13-2-514.
Qualification of elector in school elections, 20-20-301.
Definition of felony, 45-2-101.
Effect of conviction, 46-18-801.
Right to hold elected office, 49-1-202.
Rights and duties of nonelector, 49-1-203.
Developmental disabilities, Title 53, ch. 20.
Mentally ill individuals, Title 53, ch. 21.
Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) (a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 7, Ch. 571, L. 1979; amd. Sec. 1, Ch. 74, L. 1993; amd. Sec. 15, Ch. 51, L. 1999; amd. Sec. 3, Ch. 271, L. 2003.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

Rules for determining residence generally, 1-1-215.

13-1-113. Only one residence. There may be only one residence for the purposes of this title.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 8, Ch. 571, L. 1979; amd. Sec. 3, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 at end inserted "for the purposes of this title"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

Rules for determining residence generally, 1-1-215.

13-1-114. Computation of elector's age and term of residence. An elector's age and the term of an elector's residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(10); amd. Sec. 9, Ch. 571, L. 1979; amd. Sec. 30, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-115. Privilege from arrest. Electors may not be arrested during their attendance at elections and in going to and from voting places in polling place elections and to and from places of deposit in mail ballot elections, except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969; R.C.M. 1947, 23-2705; amd. Sec. 4, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 near middle after "places" inserted "in polling place elections and to and from places of deposit in mail ballot elections"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

13-1-116. Fingerprint, mark, or agent for disabled electors — rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to this title and for delivering the disabled elector's absentee ballot application to the county election administrator as provided in 13-13-213.

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an agent, election administrator, or election judge signs or marks a document for an elector pursuant to this section, the agent, election administrator, or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.

History: En. Sec. 1, Ch. 367, L. 2005.

13-1-117 through 13-1-120 reserved.

13-1-121. Question of holding constitutional convention. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973; R.C.M. 1947, 23-4801.

Cross-References

Convention by call of Legislature, Art. XIV, sec. 1, Mont. Const.

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Call of convention, Art. XIV, sec. 4, Mont. Const.

Initiative for call of convention, 13-27-206.

13-1-122. Ballot form and content. The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution requires the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

FOR calling a constitutional convention

AGAINST calling a constitutional convention

History: En. Sec. 2, Ch. 36, L. 1973; R.C.M. 1947, 23-4802; amd. Sec. 10, Ch. 571, L. 1979.

Cross-References

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Part 2
Role of Secretary of State

13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is the secretary of state's responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in Title 13, chapter 35, 36, or 37.

History: En. Sec. 11, Ch. 571, L. 1979; amd. Sec. 31, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Administration of elections — constitutional requirement, Art. IV, sec. 3, Mont. Const.

13-1-202. Forms and rules prescribed by secretary of state — consultation. (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103;

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section.

History: En. Sec. 12, Ch. 571, L. 1979; amd. Sec. 7, Ch. 414, L. 2003; amd. Sec. 8, Ch. 44, L. 2007; amd. Sec. 4, Ch. 273, L. 2007.

13-1-203. Secretary of state to advise, assist, and train. (1) The secretary of state shall advise and assist election administrators, including administrators of school elections under Title 20, chapter 20, with regard to:

(a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37;

(b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31; and

(c) the procedures adopted pursuant to 13-17-211.

(2) The secretary of state shall prepare and distribute training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops must be paid by the secretary of state. Attendees of the training must receive a certificate of instruction, which is valid for 2 years.

History: En. Sec. 13, Ch. 571, L. 1979; amd. Sec. 32, Ch. 370, L. 1987; amd. Sec. 1, Ch. 4, Sp. L. November 1993; amd. Sec. 3, Ch. 246, L. 1997; amd. Sec. 8, Ch. 414, L. 2003.

13-1-204. Election records to be kept by secretary of state. (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the most recent general election;

(e) a count of votes cast at the most recent general election by precinct and by legislative, judicial, and multicounty districts; and

(f) records required to be submitted from local election administrators and other agencies and coordinated by the secretary of state pursuant to the National Voter Registration Act of 1993, Public Law 103-31.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections must be open for public inspection during normal office hours.

History: En. Sec. 18, Ch. 571, L. 1979; amd. Sec. 1, Ch. 70, L. 1983; amd. Sec. 4, Ch. 246, L. 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Districting and apportionment, Title 5, ch. 1.
Election records open to public, 13-1-109.

13-1-205 through 13-1-208 reserved.

13-1-209. Special account for federal Help America Vote Act. (1) There is a federal special revenue account in the state treasury to the credit of the office of the secretary of state.

(2) Money provided to the state for the purposes of implementing provisions of Public Law 107-252, the Help America Vote Act of 2002, must be deposited in the account.

(3) Money in the account may be used only for the purposes specified by the federal law under which the money was provided.

History: En. Sec. 1, Ch. 218, L. 2003.

Part 3
Local Election Administration

Part Cross-References

Administration of elections — constitutional requirement, Art. IV, sec. 3, Mont. Const.

Municipal elections — wards, 7-4-4401.
Election on tax levy — search and rescue units, 7-32-235.

13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections, shall keep all county records relating to elector registration and elections, and is the primary point of contact for the county with respect to the statewide voter registration list and implementation of other provisions of applicable federal law governing elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of the political subdivision, as provided by 13-1-401.

History: En. Sec. 14, Ch. 571, L. 1979; amd. Sec. 6, Ch. 27, L. 1981; amd. Sec. 3, Ch. 475, L. 2003.

Cross-References

Duties of County Clerk and Election Administrator, 7-4-2611.
Definition of County Election Administrator, 13-1-101.
Request for County Election Administrator to conduct school election, 20-20-417.

13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

History: En. Sec. 16, Ch. 571, L. 1979; amd. Sec. 7, Ch. 27, L. 1981; amd. Sec. 1, Ch. 558, L. 1983; amd. Sec. 2, Ch. 644, L. 1987.

Cross-References

Expenses of Election Administrator, 13-2-117.
Expenses of recount in close election, 13-16-205.
Expenses of court-ordered recount, 13-16-307.

13-1-303. Disposition of ballots and other election materials. (1) (a) Except for a federal election, the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

(i) contest begun;

(ii) recount pending; or

(iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402.

History: **En. Sec. 17, Ch. 571, L. 1979; amd. Sec. 1, Ch. 97, L. 1997; amd. Sec. 2, Ch. 586, L. 2005; amd. Sec. 11, Ch. 89, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 89 in (1) at beginning of first sentence inserted exception clause and deleted former third sentence that read: "After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots as provided in subsection (2)"; inserted (1)(b) concerning retention of ballots and detached stubs; inserted (1)(c) concerning disposal of ballots under certain conditions; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Recount procedures, Title 13, ch. 16.

13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

History: **En. Sec. 25, Ch. 571, L. 1979.**

Cross-References

Registration lists not required when election not to be held, 13-2-115.
Precinct register not required when election not held, 13-2-116.
When primary election unnecessary, 13-10-209.
When nonpartisan primary election unnecessary, 13-14-115.

Part 4
Political Subdivision Elections

13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections. (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in Title 13, chapter 19.

(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), or (3) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

History: **En. Sec. 8, Ch. 27, L. 1981; amd. Sec. 29, Ch. 196, L. 1985.**

Cross-References

Time for election of directors of county water and sewer districts, 7-13-2236.
Election of local port authority commissioners, 7-14-1106.
Time for election of trustees of fire district, 7-33-2106.
Procedure for election of trustees of hospital district, 7-34-2116 through 7-34-2118.
Payment of election costs, 13-1-302.
School elections, Title 20, ch. 20.
Procedure for election of commissioners of irrigation district, 85-7-1702, 85-7-1710.
Procedure for election of commissioners of drainage district, 85-8-302, 85-8-304, 85-8-306.

CHAPTER 2
REGISTRATION OF ELECTORS

Part 1 — Registrars

13-2-101. Repealed.
13-2-102. Repealed.
13-2-103 through 13-2-106 reserved.
13-2-107. Statewide voter registration database — information-sharing agreements.
13-2-108. Rulemaking for statewide voter registration list.
13-2-109. Rulemaking on sufficiency and verification of voter registration information.
13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.
13-2-111. Repealed.
13-2-112. Register of electors to be kept.
13-2-113. Repealed.
13-2-114. Repealed.
13-2-115. Certification of statewide voter registration list — local lists to be prepared.
13-2-116. Precinct register.
13-2-117. County governing body to provide election administrator with sufficient help.
13-2-118 through 13-2-120 reserved.
13-2-121. Repealed.
13-2-122. Charges for registers, elector lists, and mailing labels made available to public.
13-2-123. Election administrator to provide list of electors to secretary of state.
13-2-124. Registration provisions for United States electors supersede.

Part 2 — Registration Procedures

13-2-201. Hours of registration.
13-2-202. Repealed.
13-2-203. Repealed.
13-2-204. Repealed.
13-2-205. Procedure when prospective elector not qualified at time of registration.
13-2-206. Citizenship requirements.
13-2-207. Confirmation of registration.
13-2-208. Elector to furnish residential address — prohibiting registration for failure to provide address.
13-2-209 and 13-2-210 reserved.
13-2-211. Repealed.
13-2-212. Renumbered 13-21-201.
13-2-213. Repealed.
13-2-214. Renumbered 13-21-202.
13-2-215. Renumbered 13-21-203.
13-2-216 through 13-2-218 reserved.
13-2-219. Repealed.
13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state.
13-2-221. Agency-based registration.
13-2-222. Reactivation of elector.

Part 3 — Close of Registration

13-2-301. Close of regular registration — notice — changes.
13-2-302. Repealed.
13-2-303. Repealed.
13-2-304. Late registration — late changes — nonapplicability for school elections.

Part 4 — Cancellation of Registration

13-2-401. Repealed.
13-2-402. Reasons for cancellation.
13-2-403. Repealed.
13-2-404. Repealed.

Part 5 — Transfer of Registration

13-2-501. Renumbered 13-2-511.
13-2-502. Renumbered 13-2-513.
13-2-503. Renumbered 13-2-515.
13-2-504 through 13-2-510 reserved.
13-2-511. Transferring registration or changing name.
13-2-512. Right to vote when precinct or name changed — change of status.
13-2-513. Procedure for transferring or correcting registration.
13-2-514. Change of residence to another county.
13-2-515. Repealed.

Part 6 — Effect of Registration

13-2-601. Special addendum to precinct register.
13-2-602. Joinder of parties in proceedings to compel entry of name in register.
13-2-603. Repealed.

Chapter Cross-References

Registration and voting by facsimile authorized, 13-21-207.

Part 1
Registrars

13-2-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(1), (2).

13-2-102. Repealed. Sec. 12, Ch. 390, L. 1993.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973; amd. Sec. 1, Ch. 205, L. 1975; amd. Sec. 9, Ch. 365, L. 1977; R.C.M. 1947, 23-3003; amd. Sec. 19, Ch. 571, L. 1979; amd. Sec. 1, Ch. 146, L. 1983; amd. Sec. 1, Ch. 446, L. 1985; amd. Sec. 1, Ch. 298, L. 1987.

13-2-103 through 13-2-106 reserved.

13-2-107. Statewide voter registration database — information-sharing agreements. (1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration database that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration database must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The database must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the database.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration database.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information.

History: En. Sec. 4, Ch. 475, L. 2003.

13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;

(e) technical security of the statewide voter registration database;

(f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(g) quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector.

History: En. Sec. 5, Ch. 475, L. 2003; amd. Sec. 2, Ch. 286, L. 2005.

13-2-109. Rulemaking on sufficiency and verification of voter registration information. (1) The secretary of state shall adopt rules:

(a) to implement the provisions of 13-2-110 and this section concerning how election administrators determine whether the information provided by an elector on an application for voter registration is:

(i) sufficient to be accepted and processed; or

(ii) insufficient to be accepted and processed;

(b) establishing procedures for verifying the accuracy of voter registration information;

(c) establishing standards for determining whether an elector may be legally registered or provisionally registered and the effect of that registration on identification requirements; and

(d) establishing procedures for notifying electors about the status of their applications and registration.

(2) The rules may not conflict with 42 U.S.C. 15301, et seq., or 13-2-208.

History: En. Sec. 6, Ch. 475, L. 2003.

13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) (a) If an applicant does not have a driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law.

History: En. Sec. 7, Ch. 475, L. 2003; amd. Sec. 3, Ch. 286, L. 2005; amd. Sec. 5, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (5)(a) at end inserted "the applicant shall provide as an alternative form of identification"; deleted former (5)(a) that read: "(a) an applicant appearing in person before the election administrator shall provide"; deleted former (5)(b) that read: "(b) an applicant applying by mail to register shall also enclose a copy of:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address"; inserted (5)(b) specifying alternative form of identification; in (6)(b) near middle after "individual's" inserted "identity or"; and made minor changes in style. Amendment effective October 1, 2009.

13-2-111. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(3).

13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner that the administrator considers most efficient. The original signed registration form for each elector must be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms must be prescribed by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969; R.C.M. 1947, 23-3004; amd. Sec. 20, Ch. 571, L. 1979; amd. Sec. 32, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-2-113. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 243, L. 1971; R.C.M. 1947, 23-3004.1.

13-2-114. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(part); amd. Sec. 21, Ch. 571, L. 1979; amd. Sec. 1, Ch. 284, L. 1983; amd. Sec. 2, Ch. 309, L. 1997.

13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) Immediately after regular registration is closed under 13-2-301, the secretary of state shall certify the official statewide voter registration list.

(2) Each election administrator shall have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. Except as provided in subsections (5) and (6), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(3) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(4) Lists of registered electors need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(6) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (6)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (6)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction.

History: Ap. p. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973; Sec. 23-3012, R.C.M. 1947; Ap. p. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973; Sec. 23-3023, R.C.M. 1947; R.C.M. 1947, 23-3012(part), 23-3023; amd. Sec. 22, Ch. 571, L. 1979; amd. Sec. 1, Ch. 161, L. 1995; amd. Sec. 1, Ch. 233, L. 1997; amd. Sec. 3, Ch. 309, L. 1997; amd. Sec. 9, Ch. 396, L. 2001; amd. Sec. 8, Ch. 475, L. 2003; amd. Sec. 4, Ch. 286, L. 2005.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.
Registered elector competent to act as juror, 3-15-301.
Jury list selected from registered elector list, 3-15-402.
Close of registration, 13-2-301.
Partner or family member assault, 45-5-206.
Stalking, 45-5-220.
Custodial interference, 45-5-304.

13-2-116. Precinct register. (1) Except for mail ballot elections conducted under Title 13, chapter 19, the election administrator shall prepare from the certified statewide voter registration list a precinct register for each precinct in the county for use by the election judges. The register may be prepared no sooner than the Friday before each election and must contain an alphabetical list of the names, with addresses, of the legally registered electors and provisionally registered electors, a space for the signature of the elector, and other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

History: (1) thru (3)En. Sec. 43, Ch. 368, L. 1969; R.C.M. 1947, 23-3024; amd. Sec. 23, Ch. 571, L. 1979; (4)En. Sec. 25, Ch. 571, L. 1979; amd. Sec. 9, Ch. 475, L. 2003; amd. Sec. 6, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) at beginning substituted exception clause for "Before each election" and in second sentence near beginning after "register" inserted "may be prepared no sooner than the Friday before each election and". Amendment effective October 1, 2009.

13-2-117. County governing body to provide election administrator with sufficient help. The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977; R.C.M. 1947, 23-3026; amd. Sec. 24, Ch. 571, L. 1979.

Cross-References

Costs of elections generally, 13-1-302.

13-2-118 through 13-2-120 reserved.

13-2-121. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971; R.C.M. 1947, 23-3027.

13-2-122. Charges for registers, elector lists, and mailing labels made available to public. (1) Except as provided in subsection (2), upon written request, the secretary of state or a local election administrator shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, or mailing labels for registered electors. Upon delivery, the secretary of state or the local election administrator may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

(2) For an elector whose address information is protected from general distribution under 13-2-115(5) or (6), the secretary of state or a local election administrator may not include the elector's residential address on any register, list, or mailing labels but may list only the elector's name.

History: En. Sec. 47, Ch. 368, L. 1969; R.C.M. 1947, 23-3028; amd. Sec. 1, Ch. 66, L. 1983; amd. Sec. 2, Ch. 161, L. 1995; amd. Sec. 2, Ch. 233, L. 1997; amd. Sec. 16, Ch. 51, L. 1999; amd. Sec. 10, Ch. 475, L. 2003.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

13-2-123. Election administrator to provide list of electors to secretary of state. (1) The election administrator in each county shall provide to the secretary of state the following information, when possible, for each elector:

(a) name;
(b) mailing address;
(c) precinct number;
(d) residence address;
(e) telephone number;
(f) driver's license number or last four digits of the elector's social security number;
(g) date of birth;
(h) gender;
(i) legislative house district;
(j) date of registration;
(k) whether the elector's name is on the active or inactive list of electors; and
(l) whether the elector is a legally registered elector or a provisionally registered elector.

(2) The information must be provided in accordance with rules adopted under 13-2-108.

History: En. Sec. 1, Ch. 309, L. 1997; amd. Sec. 5, Ch. 309, L. 1997; amd. Sec. 11, Ch. 475, L. 2003.

13-2-124. Registration provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with Title 13, chapter 21.

History: En. Sec. 8, Ch. 557, L. 2003.

Part 2
Registration Procedures

13-2-201. Hours of registration. The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(1); amd. Sec. 26, Ch. 571, L. 1979.

13-2-202. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(1); amd. Sec. 27, Ch. 571, L. 1979; amd. Sec. 2, Ch. 298, L. 1987; amd. Sec. 2, Ch. 390, L. 1993.

13-2-203. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(2) thru (6); amd. Sec. 28, Ch. 571, L. 1979; amd. Sec. 1, Ch. 396, L. 1985; amd. Sec. 2, Ch. 446, L. 1985; amd. Sec. 3, Ch. 390, L. 1993; amd. Sec. 5, Ch. 246, L. 1997; amd. Sec. 1, Ch. 39, L. 1999.

13-2-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 26, Ch. 368, L. 1969; R.C.M. 1947, 23-3007.

13-2-205. Procedure when prospective elector not qualified at time of registration. An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may apply for voter registration pursuant to 13-2-110 and be registered subject to verification procedures established pursuant to 13-2-109.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(1); amd. Sec. 29, Ch. 571, L. 1979; amd. Sec. 12, Ch. 475, L. 2003.

Cross-References

Qualifications of voter, 13-1-111.

U.S. citizenship required, 13-2-206.

13-2-206. Citizenship requirements. A person may not be permitted to register until the person attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(2); amd. Sec. 33, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-207. Confirmation of registration. (1) The election administrator shall give or mail to each elector a notice, confirming registration and giving the location of the elector's polling place. A notice sent to an elector to whom the notice is not personally given must be sent by nonforwardable, first-class mail, which must conform to postal regulations to ensure address corrections are received. If the notice is returned undeliverable the application for voter registration may not be placed on the register of electors kept by the election administrator.

(2) The election administrator shall investigate the reason for the return of any mailed notices and mail a confirmation notice to the elector. The notice must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

History: En. Sec. 30, Ch. 571, L. 1979; amd. Sec. 3, Ch. 298, L. 1987; amd. Sec. 6, Ch. 246, L. 1997.

13-2-208. Elector to furnish residential address — prohibiting registration for failure to provide address. (1) An elector shall provide the election administrator with the elector's current street address, rural address, or, if neither of those addresses is available, other specific geographic location information from which the location of the elector's residence may be easily determined by the election administrator.

(2) The election administrator may not register an elector who fails to provide the information required by subsection (1).

History: En. Sec. 1, Ch. 63, L. 2001.

13-2-209 and 13-2-210 reserved.

13-2-211. Repealed. Sec. 23, Ch. 557, L. 2003.

History: En. Sec. 136, Ch. 368, L. 1969; amd. Sec. 1, Ch. 249, L. 1971; R.C.M. 1947, 23-3718.

13-2-212. Renumbered 13-21-201. Sec. 24(2), Ch. 557, L. 2003.

13-2-213. Repealed. Sec. 5, Ch. 396, L. 1985.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971; R.C.M. 1947, 23-3720; amd. Sec. 32, Ch. 571, L. 1979.

13-2-214. Renumbered 13-21-202. Sec. 24(2), Ch. 557, L. 2003.

13-2-215. Renumbered 13-21-203. Sec. 24(2), Ch. 557, L. 2003.

13-2-216 through 13-2-218 reserved.

13-2-219. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 11, Ch. 246, L. 1997.

13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) Any notices returned to the election administrator after using the procedures provided in subsection (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

(4) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402.

History: En. Sec. 12, Ch. 246, L. 1997; amd. Sec. 13, Ch. 475, L. 2003; amd. Sec. 7, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 inserted (4) providing for reactivation or cancellation of elector's registration. Amendment effective October 1, 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-2-221. Agency-based registration. (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

(a) at an agency that provides public assistance;

(b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or

(c) at another agency designated by the secretary of state with the consent of the agency.

(2) Agency-based registration sites must:

(a) distribute application for voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing an application for voter registration form unless the applicant refuses assistance.

(3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, "agency" means a state agency as defined in 2-4-102(2)(a) or an office of a city, county, consolidated city-county government, or town.

History: En. Sec. 13, Ch. 246, L. 1997; amd. Sec. 17, Ch. 51, L. 1999; amd. Sec. 34, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Administration of public assistance, Title 53, ch. 2.

Powers and duties of department, 53-2-201.

Department to cooperate in delivery of programs to persons with disabilities, 53-6-603.

Developmental disabilities, Title 53, ch. 20.

13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears at a polling place in order to vote, votes by absentee ballot in a polling place election or mail ballot election, or votes in a mail ballot election conducted under Title 13, chapter 19;

(b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted.

History: En. Sec. 14, Ch. 246, L. 1997; amd. Sec. 2, Ch. 208, L. 1999; amd. Sec. 1, Ch. 446, L. 2005; amd. Sec. 8, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(a) after "appears" inserted "at a polling place" and at end substituted "in a polling place election or mail ballot election, or votes in a mail ballot election conducted under Title 13, chapter 19" for "in any election"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Rules for determining residence, 1-1-215.

Part 3
Close of Registration

13-2-301. Close of regular registration — notice — changes. (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election.

(5) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971; R.C.M. 1947, 23-3016; amd. Sec. 34, Ch. 571, L. 1979; amd. Sec. 3, Ch. 446, L. 1985; amd. Sec. 2, Ch. 302, L. 1991; amd. Sec. 12, Ch. 7, L. 2001; amd. Sec. 5, Ch. 286, L. 2005; amd. Sec. 3, Ch. 586, L. 2005; amd. Sec. 9, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(b) in first sentence at beginning substituted "publish" for "broadcast", after "will close" substituted "and the availability of the late registration option provided for in 13-2-304" for "on radio or television as provided in 2-3-105 through 2-3-107 or publish the notice", and at end after "registration" inserted remainder of sentence providing for broadcast of notice and in second sentence at end inserted "or broadcast of the notice"; in (4) at end deleted "at the polling place for that elector's precinct"; in (5) at beginning deleted "Subject to the provisions of 13-2-304"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Times for holding general elections, 13-1-104.
Times for holding primary elections, 13-1-107.
Filing of nominating petitions for supervisor of conservation district, 76-15-302.

13-2-302. Repealed. Sec. 19, Ch. 286, L. 2005.

History: En. Sec. 36, Ch. 368, L. 1969; R.C.M. 1947, 23-3017; amd. Sec. 35, Ch. 571, L. 1979.

13-2-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 368, L. 1969; amd. Sec. 25, Ch. 342, L. 1977; amd. Sec. 5, Ch. 365, L. 1977; R.C.M. 1947, 23-2704.

13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20.

History: En. Sec. 1, Ch. 286, L. 2005; amd. Sec. 5, Ch. 273, L. 2007; amd. Sec. 10, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(c) at end substituted "if the elector obtains the ballot from and returns it to the location designated by the county election administrator" for "if the elector votes at the county election administrator's office". Amendment effective October 1, 2009.

Part 4
Cancellation of Registration

13-2-401. Repealed. Sec. 16, Ch. 246, L. 1997.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973; amd. Sec. 1, Ch. 369, L. 1977; R.C.M. 1947, 23-3013; amd. Sec. 36, Ch. 571, L. 1979; amd. Sec. 4, Ch. 446, L. 1985.

13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector if:

(1) the elector submits a written request for cancellation;

(2) a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409 or through a newspaper obituary;

(3) the elector is of unsound mind as established by a court;

(4) the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state;

(7) the elector:

(a) fails to respond to certain confirmation mailings;

(b) is placed on the inactive list; and

(c) then fails to vote in two consecutive federal general elections; or

(8) the elector fails to meet any voter qualification that is listed in 13-1-111.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(1); amd. Sec. 37, Ch. 571, L. 1979; amd. Sec. 48, Ch. 575, L. 1981; amd. Sec. 38, Ch. 418, L. 1995; amd. Sec. 42, Ch. 546, L. 1995; amd. Sec. 7, Ch. 246, L. 1997; amd. Sec. 3, Ch. 208, L. 1999; amd. Sec. 1, Ch. 96, L. 2001; amd. Sec. 14, Ch. 475, L. 2003; amd. Sec. 4, Ch. 586, L. 2005; amd. Sec. 11, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 inserted (7)(b) concerning inactive list; in (7)(c) at beginning inserted "then"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.
Qualifications of voter, 13-1-111.
Challenges on election day, 13-13-301.
Effect of conviction, 46-18-801.

13-2-403. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(2); amd. Sec. 38, Ch. 571, L. 1979; amd. Sec. 8, Ch. 246, L. 1997.

13-2-404. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(1), (2); amd. Sec. 39, Ch. 571, L. 1979.

Part 5
Transfer of Registration

13-2-501. Renumbered 13-2-511. Code Commissioner, 1979.

13-2-502. Renumbered 13-2-513. Code Commissioner, 1979.

13-2-503. Renumbered 13-2-515. Code Commissioner, 1979.

13-2-504 through 13-2-510 reserved.

13-2-511. Transferring registration or changing name. An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose.

History: En. Sec. 28, Ch. 368, L. 1969; R.C.M. 1947, 23-3009; amd. Sec. 40, Ch. 571, L. 1979; Sec. 13-2-501, MCA 1979; redes. 13-2-511 by Code Commissioner, 1979.

13-2-512. Right to vote when precinct or name changed — change of status. (1) An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled as provided in 13-2-402.

(2) An elector who still resides in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change by a new registration form may vote under the elector's former name at the first election at which the elector offers to vote after the change unless the elector's registration has been canceled as provided in 13-2-402.

(3) The elector shall state the elector's correct residence address and name when offering to vote and shall complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

History: En. Sec. 41, Ch. 571, L. 1979; amd. Sec. 9, Ch. 246, L. 1997; amd. Sec. 2, Ch. 446, L. 2005.

13-2-513. Procedure for transferring or correcting registration. Subject to the rules adopted under 13-2-108, the election administrator shall make the necessary corrections in the registration records when the election administrator receives a transfer form or corrected registration form.

History: En. Sec. 29, Ch. 368, L. 1969; R.C.M. 1947, 23-3010; amd. Sec. 42, Ch. 571, L. 1979; Sec. 13-2-502, MCA 1979; redes. 13-2-513 by Code Commissioner, 1979; amd. Sec. 15, Ch. 475, L. 2003.

13-2-514. Change of residence to another county. (1) Except as provided in subsection (2)(a), an elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election.

(2) An elector who changes residence to a different county 30 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) update the elector's registration information and vote in the elector's new county of residence, subject to the regular registration provisions of 13-2-301 or the late registration provisions of 13-2-304.

(3) The registration information of an elector whose information is changed pursuant to this section must be updated in the statewide voter registration list pursuant to rules adopted under 13-2-108.

History: En. Sec. 43, Ch. 571, L. 1979; amd. Sec. 16, Ch. 475, L. 2003; amd. Sec. 6, Ch. 286, L. 2005; amd. Sec. 5, Ch. 586, L. 2005.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.
Qualifications of voter, 13-1-111.
Rules for determining residence, 13-1112.

13-2-515. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 30, Ch. 368, L. 1969; R.C.M. 1947, 23-3011; amd. Sec. 44, Ch. 571, L. 1979; Sec. 13-2-503, MCA 1979; redes. 13-2-515 by Code Commissioner, 1979.

Part 6
Effect of Registration

13-2-601. Special addendum to precinct register. The name of an elector who has been assigned to vote in a precinct other than the precinct in which the person is registered, as provided in 13-3-213, must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state.

History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(1); amd. Sec. 45, Ch. 571, L. 1979; amd. Sec. 11, Ch. 200, L. 1987; amd. Sec. 17, Ch. 475, L. 2003.

13-2-602. Joinder of parties in proceedings to compel entry of name in register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969; R.C.M. 1947, 23-3019.

13-2-603. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 39, Ch. 368, L. 1969; R.C.M. 1947, 23-3020; amd. Sec. 46, Ch. 571, L. 1979.

CHAPTER 3
PRECINCTS AND POLLING PLACES

Part 1 — Designation of Precincts and Polling Places

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Chapter Cross-References

Number of qualified electors, Art. III, sec. 7, Mont. Const.
Legislative districting and apportionment, Art. V, sec. 14, Mont. Const.
Reapportionment Commission, Title 5, ch. 1, part 1.
Definitions applicable to this chapter, 13-1-101.

Part 1
Designation of Precincts and Polling Places

13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(1), (2), (3)(b); amd. Sec. 47, Ch. 571, L. 1979.

13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan must be consulted before adoption of the final plan.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(3)(a), (4); amd. Sec. 48, Ch. 571, L. 1979; amd. Sec. 35, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall ensure that a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county are prepared and delivered to the election administrator.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

History: (1)En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; Sec. 23-3101, R.C.M. 1947; (2)En. Sec. 19, Ch. 368, L. 1969; Sec. 23-3102, R.C.M. 1947; R.C.M. 1947, 23-3101(3)(c), 23-3102; amd. Sec. 49, Ch. 571, L. 1979; amd. Sec. 36, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Districting and apportionment, Title 5, ch. 1.

13-3-104. Precincts, wards, and election districts. (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(5), (6); amd. Sec. 50, Ch. 571, L. 1979.

13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 days or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges.

History: **En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974; R.C.M. 1947, 23-3103; amd. Sec. 51, Ch. 571, L. 1979; amd. Sec. 1, Ch. 562, L. 1981; amd. Sec. 12, Ch. 200, L. 1987; amd. Sec. 9, Ch. 414, L. 2003.**

Cross-References

Election on questions of municipal indebtedness — polling places, 7-7-4103.

Part 2
Accessibility of Polling Places

Part Cross-References

Rights of physically disabled, Title 49, ch. 4, part 2.

13-3-201. Purpose. The purpose of this part is to promote the fundamental right to vote by improving access to polling places for individuals with disabilities and elderly individuals. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because an accessible polling place does not exist or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides voters with disabilities and elderly voters an alternative means for casting a ballot on election day.

History: **En. Sec. 1, Ch. 200, L. 1987; amd. Sec. 6, Ch. 472, L. 1997; amd. Sec. 37, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) "Disability" means a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(3) "Elderly" means 65 years of age or older.

(4) "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(5) "Inaccessible" means not accessible under standards adopted pursuant to 13-3-205.

(6) "Rural polling place" means a location that is expected to serve less than 200 registered electors.

History: **En. Sec. 2, Ch. 200, L. 1987; amd. Sec. 7, Ch. 472, L. 1997; amd. Sec. 1, Ch. 228, L. 2007.**

13-3-203. Repealed. Sec. 7, Ch. 228, L. 2007.

History: **En. Sec. 3, Ch. 200, L. 1987; amd. Sec. 8, Ch. 472, L. 1997.**

13-3-204. Repealed. Sec. 7, Ch. 228, L. 2007.

History: **En. Sec. 4, Ch. 200, L. 1987.**

13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.

(2) Standards for polling places approved pursuant to subsection (1) on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) The secretary of state:

(a) may adopt rules to implement the provisions of this part; and

(b) shall adopt rules to implement the exemption provisions of 13-3-212.

History: En. Sec. 5, Ch. 200, L. 1987; amd. Sec. 9, Ch. 472, L. 1997; amd. Sec. 2, Ch. 367, L. 2005; amd. Sec. 2, Ch. 228, L. 2007; amd. Sec. 12, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 deleted former (2)(a) that read: "(a) Standards for polling places approved pursuant to subsection (1) prior to October 1, 2005, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards"; in (2) after "approved" inserted "pursuant to subsection (1)"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-3-206. Survey of polling places to determine accessibility — procedures. (1) The election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether it meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel that an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed pursuant to this section need not be surveyed again unless:

(a) the conditions of accessibility change; or

(b) the initial survey results are inaccurate.

History: En. Sec. 6, Ch. 200, L. 1987; amd. Sec. 3, Ch. 228, L. 2007; amd. Sec. 13, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 inserted (3)(b) pertaining to inaccurate initial survey results; and made minor changes in style. Amendment effective October 1, 2009.

13-3-207. Polling place classifications. As a result of the survey provided in 13-3-206, each polling place must be classified as:

(1) accessible; or

(2) inaccessible.

History: En. Sec. 7, Ch. 200, L. 1987; amd. Sec. 10, Ch. 472, L. 1997; amd. Sec. 4, Ch. 228, L. 2007.

13-3-208 through 13-3-210 reserved.

13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place is considered temporary and is exempt from the survey procedures established under 13-3-206. However, the polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.

History: En. Sec. 8, Ch. 200, L. 1987; amd. Sec. 38, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-3-212. Exemption if no accessible polling place is reasonably available. (1) If an election administrator desires to designate as a polling place a location that is inaccessible, the election administrator shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt from the standards for accessibility.

(2) The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205 if all potential polling places have been surveyed and it is determined that:

(a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct.

History: En. Sec. 9, Ch. 200, L. 1987; amd. Sec. 5, Ch. 228, L. 2007.

13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot as provided in 13-13-222; and

(c) prearranged assignment to an accessible polling place within the county.

(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;

(c) shall sign the elector's name on a special addendum to the official precinct register as required in 13-2-601; and

(d) must receive the same ballot to which the elector is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

History: En. Sec. 10, Ch. 200, L. 1987; amd. Sec. 11, Ch. 472, L. 1997; amd. Sec. 6, Ch. 228, L. 2007.

CHAPTER 4
ELECTION JUDGES

Part 1 — Appointment

13-4-101. Appointment of election judges.
13-4-102. Manner of choosing election judges.
13-4-103. Judges to serve until others appointed.
13-4-104. Election administrator to notify judges.
13-4-105. Oath of judges.
13-4-106. Compensation of judges.
13-4-107. Qualifications of election judges.

Part 2 — Functions

13-4-201. Duties of chief election judge.
13-4-202. Administration of oaths.
13-4-203. Instruction of judges — training materials.
13-4-204. Repealed.
13-4-205. Repealed.
13-4-206. Repealed.
13-4-207. Judges to remain at polls — emergency provisions — part-time service.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to conduct of election officials and judges, 13-35-202.

Part 1
Appointment

13-4-101. Appointment of election judges. At least 30 days before the primary election in even-numbered years, the county governing body shall appoint three or more election judges for each precinct, one of whom must be designated chief judge.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part); amd. Sec. 52, Ch. 571, L. 1979; amd. Sec. 1, Ch. 120, L. 1983; amd. Sec. 10, Ch. 414, L. 2003.

Cross-References

Time for primary elections, 13-1-107.

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

Duties of Counting Board, 13-15-103.

13-4-102. Manner of choosing election judges. (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, to the extent possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may select enough people meeting the qualifications of 13-4-107 to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103.

History: **En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973; R.C.M. 1947, 23-3202; amd. Sec. 54, Ch. 571, L. 1979; amd. Sec. 1, Ch. 232, L. 1993; amd. Sec. 11, Ch. 414, L. 2003; amd. Sec. 14, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (4) in second sentence substituted "may select enough people meeting the qualifications of 13-4-107" for "may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Registration lists, 13-2-115.

Political parties eligible to nominate candidates in primary election, 13-10-601.

13-4-103. Judges to serve until others appointed. The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

History: **En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971; R.C.M. 1947, 23-3203; amd. Sec. 55, Ch. 571, L. 1979.**

13-4-104. Election administrator to notify judges. The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

History: **En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(1); amd. Sec. 56, Ch. 571, L. 1979.**

Cross-References

Notification to county political party chairpersons, 13-4-203.

13-4-105. Oath of judges. Before beginning service on each election day, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: **En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(1); amd. Sec. 57, Ch. 571, L. 1979; amd. Sec. 2, Ch. 232, L. 1993.**

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges must be paid at least the state or federal minimum wage, whichever is greater, for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than $1,000 in the calendar year.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received.

History: **En. Sec. 55, Ch. 368, L. 1969; R.C.M. 1947, 23-3207; amd. Sec. 58, Ch. 571, L. 1979; amd. Sec. 7, Ch. 591, L. 1991; amd. Sec. 1, Ch. 195, L. 1995; amd. Sec. 1, Ch. 44, L. 2001; amd. Sec. 1, Ch. 47, L. 2003; amd. Sec. 15, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (1) in first sentence substituted "the state or federal minimum wage, whichever is greater" for "the prevailing federal minimum wage"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Mileage and expenses, Title 2, ch. 18, part 5.

13-4-107. Qualifications of election judges. (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

History: **En. Sec. 53, Ch. 571, L. 1979.**

Cross-References

Appointment of relative to office of trust or emolument unlawful—exceptions, 2-2-302.

Part 2
Functions

13-4-201. Duties of chief election judge. The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and, if assigned to work through the close of the polls, shall be responsible for the return of or for arranging the return of all ballots and election supplies to the election administrator.

History: **En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(2), (3); amd. Sec. 59, Ch. 571, L. 1979; amd. Sec. 3, Ch. 232, L. 1993.**

13-4-202. Administration of oaths. Any election judge may administer and certify oaths required from electors or election judges during an election.

History: **En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(2); amd. Sec. 60, Ch. 571, L. 1979; amd. Sec. 16, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 near middle inserted "from electors or election judges". Amendment effective October 1, 2009.

13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction obtained pursuant to 13-1-203(3) must be instructed by the election administrator. In precincts where voting systems are used, instructions must cover both how to operate the voting system and how to manually process any paper ballots.

(2) Chief election judges may be required to attend the training session before each election, as well as a special session that may be held for chief election judges only, even if they possess a current certificate of instruction.

(3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. However, the individual may not be paid for attendance unless the individual is appointed as an election judge.

(4) Each election judge completing a training session under this section must be given a certificate of completion. An individual may not serve as an election judge without a valid certificate obtained under 13-1-203(3) or this section. However, this requirement does not apply to individuals filling vacancies in emergencies.

(5) All election judges shall obtain a certificate of instruction or be recertified before the primary election in even-numbered years.

(6) Notice of the place and time of instruction must be given by the election administrator to the presiding officers of the political parties in the county.

History: **En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971; R.C.M. 1947, 23-3206; amd. Sec. 61, Ch. 571, L. 1979; amd. Sec. 12, Ch. 414, L. 2003; amd. Sec. 17, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (2) in two places before "judges" inserted "election"; in (5) substituted "All election judges shall obtain a certificate of instruction or be recertified" for "All certificates of completion expire 30 days"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Notification to judges, 13-4-104.

13-4-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part).

13-4-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(3).

13-4-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(4).

13-4-207. Judges to remain at polls — emergency provisions — part-time service. (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open.

History: En. Sec. 62, Ch. 571, L. 1979; amd. Sec. 4, Ch. 232, L. 1993.

Cross-References

Voting of election judges by absentee ballot, 13-13-201.

CHAPTERS 5 THROUGH 9
RESERVED

CHAPTER 10
PRIMARY ELECTIONS AND NOMINATIONS

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13-10-208. Certificate of primary ballot — preparing ballot.
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13-10-505. Applicability.
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13-10-601. Parties eligible for primary election — petitions by minor parties.
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Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.
Times for holding primary elections, 13-1-107.
Criminal provisions relating to primary elections and nominations, Title 13, ch. 35.

Part 1
General Provisions
(Repealed)

13-10-101. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 58, Ch. 368, L. 1969; R.C.M. 1947, 23-3303.

13-10-102. Repealed. Sec. 11, Ch. 52, L. 1993.
History: En. Sec. 1, Ch. 2, Sp. L. January 1992.

Part 2
Preprimary Procedures

13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1), a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

History: (1) thru (5)En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; Sec. 23-3304, R.C.M. 1947; (6)En. Sec. 60, Ch. 368, L. 1969; amd. Sec. 15, Ch. 365, L. 1977; Sec. 23-3305, R.C.M. 1947; R.C.M. 1947, 23-3304(1) thru (4), (8), 23-3305; amd. Sec. 63, Ch. 571, L. 1979; amd. Sec. 25, Ch. 250, L. 1985; amd. Sec. 3, Ch. 644, L. 1987; amd. Sec. 2, Ch. 74, L. 1993; amd. Sec. 1, Ch. 5, L. 1997; amd. Sec. 1, Ch. 40, L. 1999; amd. Sec. 1, Ch. 7, L. 2003; amd. Sec. 18, Ch. 475, L. 2003; amd. Sec. 6, Ch. 586, L. 2005; amd. Sec. 1, Ch. 96, L. 2007; amd. Sec. 1, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (6)(a) at beginning inserted exception clause; inserted (6)(b) providing filing deadlines for candidate's declaration for nomination; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.
Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.
General qualifications of persons seeking election to public office, 2-16-102.
Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.
Election Administrator, 13-1-301.
Petition for nomination in presidential preference primary, 13-10-405.
Declaration of nomination in nonpartisan election, 13-14-112, 13-14-113.
Criminal provisions relating to declaration of nomination, 13-35-205 through 13-35-207, 13-35-221.

13-10-202. Filing fees. Filing fees are as follows:

(1) for offices having an annual salary of $2,500 or less and candidates for the legislature, $15;

(2) for county offices having an annual salary of more than $2,500, 0.5% of the total annual salary;

(3) for other offices having an annual salary of more than $2,500, 1% of the total annual salary;

(4) for offices in which compensation is paid in fees, $10;

(5) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(5); amd. Sec. 64, Ch. 571, L. 1979.

Cross-References

Salaries of certain elected state officials, 2-16-405.
Salaries of certain county officers, 7-4-2503.
Filing fees not to be refunded if candidate withdraws, 13-10-325.
No fee for filing presidential preference primary petition, 13-10-405.

13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a verified statement that the candidate is unable to pay the filing fee;

(2) from a candidate for nomination, a verified statement that the candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) the petition contains the name of the office to be filled and the candidate's name and residence address;

(b) the petition contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(7); amd. Sec. 65, Ch. 571, L. 1979; amd. Sec. 39, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Equal protection of laws, Art. II, sec. 4, Mont. Const.

13-10-204. Write-in nominations. (1) An individual nominated by having the individual's name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual's name appear on the general election ballot unless the individual:

(a) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;

(b) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination; and

(c) complies with the provisions of 13-37-126.

(2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in 13-10-203.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(6); amd. Sec. 66, Ch. 571, L. 1979; amd. Sec. 13, Ch. 414, L. 2003; amd. Sec. 7, Ch. 586, L. 2005; amd. Sec. 6, Ch. 273, L. 2007.

Cross-References

Write-in votes for previously nominated candidates, 13-10-302.
Acceptance of write-in nomination by independent candidate, 13-10-305.
Declaration or certification withheld for failure to file acceptance, 13-15-405, 13-15-507.

13-10-205. Register of candidates. The secretary of state and the election administrator may each keep a register of candidates who file with their respective offices. The register shall provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state may prepare and distribute a recommended format for the register.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(1), (2); amd. Sec. 67, Ch. 571, L. 1979; amd. Sec. 1, Ch. 99, L. 1987.

13-10-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(3).**

13-10-207. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(4).**

13-10-208. Certificate of primary ballot — preparing ballot. (1) Not more than 85 days and not less than 75 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

(2) (a) Except as provided in subsection (2)(b), not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

(b) For a primary election conducted pursuant to 13-1-107(1), the election administrator shall, not more than 75 days and not less than 70 days before the date of the primary election, certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: **En. Sec. 62, Ch. 368, L. 1969; R.C.M. 1947, 23-3307; amd. Sec. 68, Ch. 571, L. 1979; amd. Sec. 26, Ch. 250, L. 1985; amd. Sec. 3, Ch. 74, L. 1993; amd. Sec. 14, Ch. 414, L. 2003; amd. Sec. 2, Ch. 292, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 292 in (1) substituted "85 days" for "75 days" and substituted "75 days" for "67 days"; in (2)(a) at beginning inserted exception clause; inserted (2)(b) providing timeframe for election administrator to certify candidate names and ballot issues and prepare ballots; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancy prior to primary election, 13-10-326.
Certification of other election ballots, 13-12-201.

13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate;

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; or

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(1), (2), (7); amd. Sec. 69, Ch. 571, L. 1979; amd. Sec. 5, Ch. 298, L. 1987; amd. Sec. 1, Ch. 537, L. 2001; amd. Sec. 15, Ch. 414, L. 2003; amd. Sec. 8, Ch. 586, L. 2005; amd. Sec. 7, Ch. 273, L. 2007.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of ballots in other elections, 13-12-203.

13-10-210. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 64, Ch. 368, L. 1969; R.C.M. 1947, 23-3309.

13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be provided to the election administrator or secretary of state:

(a) by facsimile transmission if a facsimile facility is available for receipt;

(b) in person; or

(c) by mail.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.

History: **En. Sec. 1, Ch. 391, L. 1989; amd. Sec. 1, Ch. 143, L. 1995; amd. Sec. 2, Ch. 40, L. 1999; amd. Sec. 1, Ch. 129, L. 1999; amd. Sec. 1, Ch. 15, L. 2001; amd. Sec. 16, Ch. 414, L. 2003; amd. Sec. 19, Ch. 475, L. 2003; amd. Sec. 9, Ch. 586, L. 2005; amd. Sec. 1, Ch. 191, L. 2007; amd. Sec. 8, Ch. 273, L. 2007; amd. Sec. 1, Ch. 338, L. 2007; amd. Sec. 18, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (1) inserted third sentence providing for notice to county election administrator of filing of declaration of intent; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Primary Election Procedure

13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall cast votes on only one of the party ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.

(3) The elector's ballot must be handled as prescribed in 13-13-117.

History: **En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(8), (9); amd. Sec. 70, Ch. 571, L. 1979; amd. Sec. 17, Ch. 414, L. 2003; amd. Sec. 9, Ch. 273, L. 2007.**

Cross-References

General election procedures, Title 13, ch. 13.

13-10-302. Write-in votes for previously nominated candidates. (1) Subject to subsection (2), if an elector casts a write-in vote for a candidate on a primary party ballot when the candidate's name also appears for the same office on another party's ballot, the write-in vote counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes and the votes cast for the candidate on the other party's ballots may not be added together.

(2) A write-in vote must be counted as provided in 13-15-206(5).

History: **En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(3); amd. Sec. 71, Ch. 571, L. 1979; amd. Sec. 2, Ch. 143, L. 1995; amd. Sec. 2, Ch. 15, L. 2001; amd. Sec. 18, Ch. 414, L. 2003; amd. Sec. 10, Ch. 586, L. 2005.**

13-10-303. Nominations by more than one party. If an individual is nominated by more than one party, the individual shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which the individual's name is to appear upon the ballot for the general election. If the individual fails to notify the proper officers, the individual's name must appear under the party with whom the declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, the individual's name must appear on the ballot without a party designation.

History: **En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(4); amd. Sec. 72, Ch. 571, L. 1979; amd. Sec. 19, Ch. 414, L. 2003.**

Cross-References

Declaration for nomination, 13-10-201.

Printing candidate's name and party designation on ballot, 13-12-203.

13-10-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(5).**

13-10-305. Independent forfeits place on ballot. An individual who has filed as an independent candidate forfeits the individual's place on the general election ballot as an independent candidate if the individual accepts a write-in nomination for an office as provided in 13-10-204.

History: **En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(6); amd. Sec. 73, Ch. 571, L. 1979; amd. Sec. 40, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-10-306 through 13-10-310 reserved.

13-10-311. Election judges' duties when preparing for count. (1) Except as otherwise provided in this section, election judges at the primary election shall prepare for a count of votes in the manner prescribed in 13-15-201.

(2) In preparing for a count, the election judges shall:

(a) separate the ballots for each political party and count each party's ballots separately;

(b) reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations must be handled as provided in 13-15-201.

(c) list each party's candidates separately in the tally books; and

(d) bundle the voted ballots for each party separately for return to the election administrator. The unvoted ballots must be bundled in accordance with rules established pursuant to 13-12-202.

History: **En. Sec. 65, Ch. 368, L. 1969; R.C.M. 1947, 23-3310; amd. Sec. 74, Ch. 571, L. 1979; amd. Sec. 20, Ch. 414, L. 2003; amd. Sec. 10, Ch. 273, L. 2007.**

13-10-312. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 66, Ch. 368, L. 1969; amd. Sec. 17, Ch. 365, L. 1977; R.C.M. 1947, 23-3311.**

13-10-313. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 67, Ch. 368, L. 1969; amd. Sec. 18, Ch. 365, L. 1977; R.C.M. 1947, 23-3312.**

13-10-314. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(1).**

13-10-315. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(6).**

13-10-316. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(5).**

13-10-317. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(3), (4).**

13-10-318. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **(1)En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; Sec. 23-3313, R.C.M. 1947; (2) thru (4)En. Sec. 69, Ch. 368, L. 1969; amd. Sec. 3, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 20 Ch. 365, L. 1977; Sec. 23-3314, R.C.M. 1947; R.C.M. 1947, 23-3313(2), 23-3314.**

13-10-319. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(10).**

13-10-320. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 79, Ch. 368, L. 1969; amd. Sec. 24, Ch. 365, L. 1977; R.C.M. 1947, 23-3319.**

13-10-321. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 70, Ch. 368, L. 1969; amd. Sec. 22, Ch. 365, L. 1977; R.C.M. 1947, 23-3315.**

13-10-322 through 13-10-324 reserved.

13-10-325. Withdrawal from nomination. (1) (a) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom the candidate's declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. The statement must be sworn or affirmed before an officer empowered to administer oaths.

(b) Except as provided in subsection (1)(c), a candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(c) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1).

(2) Filing fees paid by the candidate may not be refunded.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(1); amd. Sec. 75, Ch. 571, L. 1979; amd. Sec. 27, Ch. 250, L. 1985; amd. Sec. 2, Ch. 229, L. 1989; amd. Sec. 41, Ch. 56, L. 2009; amd. Sec. 3, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 292 in (1)(b) at beginning inserted exception clause; inserted (1)(c) providing that candidate may not withdraw later than 85 days before certain general and primary elections; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Officers who may administer oaths, 1-6-101.

Withdrawal based on promise or payment of consideration unlawful, 13-35-221.

13-10-326. Vacancy prior to primary election. (1) Except as provided in subsection (2):

(a) if a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or

(b) if a candidate for nomination for a partisan office dies less than 75 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(2) For an election conducted pursuant to 13-1-104(1)(a) or 13-1-107(1):

(a) if a candidate for nomination for a partisan office dies or withdraws 85 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or

(b) if a candidate for nomination for a partisan office dies less than 85 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(3) This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(2); amd. Sec. 76, Ch. 571, L. 1979; amd. Sec. 28, Ch. 250, L. 1985; amd. Sec. 11, Ch. 273, L. 2007; amd. Sec. 4, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (1) at beginning inserted exception clause; inserted (2) providing requirements for political party to appoint a replacement candidate; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Certificate of primary ballot, 13-10-208.

Vacancy in Governor or Lieutenant Governor candidacy, 13-10-328.

Certification of other election ballots, 13-12-201.

Labels to be prepared if appointment made after printing of ballot, 13-12-204.

Power of political party to nominate replacement, 13-38-101, 13-38-204.

13-10-327. Vacancy after primary and prior to general election. (1) Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate, if a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment must be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment must be made under rules adopted by the county central committee.

(2) Except as provided in this section, appointments to fill vacancies must be made no later than 76 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(3); amd. Sec. 77, Ch. 571, L. 1979; amd. Sec. 29, Ch. 250, L. 1985; amd. Sec. 3, Ch. 229, L. 1989; amd. Sec. 1, Ch. 85, L. 1997; amd. Sec. 2, Ch. 537, L. 2001.

Cross-References

Vacancy in Executive Branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.
Vacancy in House or Senate, Title 5, ch. 2, part 4.
Vacancy in county office, 7-4-2106, 7-4-2206.
Declaration for nomination, 13-10-201.
Labels to be prepared if appointment made after printing of ballot, 13-12-204.
Power of political party to nominate replacement, 13-38-101, 13-38-204.
Vacancy in Office of County Superintendent of Schools, 20-3-202.
Vacancy in office of school district trustee, 20-3-309.
Vacancy in office of community college district trustee, 20-15-223.
Vacancy in office of conservation district supervisor, 76-15-312.

13-10-328. Vacancy in governor or lieutenant governor candidacy. (1) Except as provided in this section, death or withdrawal of a candidate for governor or lieutenant governor does not affect the candidacy of the other joint candidate.

(2) If a candidate for the office of governor dies less than 85 days before a general election, the candidate for lieutenant governor must be advanced on the ballot to the candidacy for governor and the candidate for governor shall select an individual to be a candidate for lieutenant governor. If a candidate for the office of lieutenant governor dies less than 85 days before a general election, the candidate for governor shall select an individual to be a candidate for lieutenant governor. The name of a candidate for governor or a candidate for lieutenant governor, or both, designated or selected pursuant to this section, must be certified to the election administrators by the secretary of state, and one of the procedures provided in 13-12-204 must be used to place the name of the new candidate on the ballot.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(4); amd. Sec. 78, Ch. 571, L. 1979; amd. Sec. 2, Ch. 85, L. 1997.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.
Death or disqualification of Governor-Elect, Art. VI, sec. 14, Mont. Const.

Part 4
Presidential Preference Primary

13-10-401. Date of presidential primary. In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in 13-1-107.

History: En. 23-3322 by Sec. 1, Ch. 162, L. 1974; R.C.M. 1947, 23-3322; amd. Sec. 79, Ch. 571, L. 1979; amd. Sec. 4, Ch. 644, L. 1987.

13-10-402. Ballot. The regular party primary ballots shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

History: En. 23-3323 by Sec. 2, Ch. 162, L. 1974; R.C.M. 1947, 23-3323; amd. Sec. 80, Ch. 571, L. 1979; amd. Sec. 5, Ch. 644, L. 1987.

Cross-References

Ballots for primary elections, 13-10-209.

13-10-403. Form of ballot. The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space.

History: En. 23-3324 by Sec. 3, Ch. 162, L. 1974; R.C.M. 1947, 23-3324; amd. Sec. 81, Ch. 571, L. 1979; amd. Sec. 6, Ch. 644, L. 1987.

13-10-404. Placement of candidate on primary ballot — methods of qualification. Before an individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual shall qualify by one or more of the following methods:

(1) The individual has been nominated on petitions with the verified signatures of at least 500 qualified electors. The secretary of state shall prescribe the form and content of the petition.

(2) The individual has submitted a declaration for nomination to the secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq.

History: En. 23-3325 by Sec. 4, Ch. 162, L. 1974; R.C.M. 1947, 23-3325; amd. Sec. 10, Ch. 52, L. 1993; amd. Sec. 2, Ch. 5, L. 1997.

Cross-References

Criminal provisions relating to signing petition, 13-35-207.

13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6)(b). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state.

History: En. 23-3326 by Sec. 5, Ch. 162, L. 1974; amd. Sec. 28, Ch. 342, L. 1977; R.C.M. 1947, 23-3326; amd. Sec. 82, Ch. 571, L. 1979; amd. Sec. 7, Ch. 644, L. 1987; amd. Sec. 4, Ch. 390, L. 1993; amd. Sec. 5, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in first sentence at end substituted "13-10-201(6)(b)" for "13-10-201(6)". Amendment effective October 1, 2009.

13-10-406. Repealed. Sec. 11, Ch. 644, L. 1987.

History: En. 23-3327 by Sec. 6, Ch. 162, L. 1974; R.C.M. 1947, 23-3327.

13-10-407. Delegates to national presidential nominating conventions. The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

History: En. 23-3328 by Sec. 7, Ch. 162, L. 1974; R.C.M. 1947, 23-3328.

Part 5

Methods of Nomination Other Than by Primary Election

13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election. (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party that does not meet the requirements of 13-10-601 may be made by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle that the body represents.

(4) The form of the petition must be prescribed by the secretary of state, and the secretary of state shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county.

History: **En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(1), (2); amd. Sec. 83, Ch. 571, L. 1979; amd. Sec. 42, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Procedure for independent filing for vacancy in office of state Senator, 5-2-406.
Procedure for independent filing for vacancy on Board of County Commissioners, 7-4-2106.
Procedure for independent filing for vacancy in county office, 7-4-2206.

13-10-502. Signature requirements for petition. (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and printed last name of the signer.

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the officer with whom nominations for the office sought are filed shall determine the number of signatures required for a petition of nomination for that office.

History: **En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(3), (4); amd. Sec. 84, Ch. 571, L. 1979; amd. Sec. 3, Ch. 537, L. 2001.**

Cross-References

Vacancy in office of state Senator, 5-2-406.
Vacancy on Board of County Commissioners, 7-4-2106.
Vacancy in county office, 7-4-2206.
Criminal provisions relating to signing petition, 13-35-207.

13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. If there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing. If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.

(2) Except as provided in 13-10-504, each petition for nomination, accompanied by the required filing fee, must be filed by the applicable deadline established in 13-10-201(6)(a) or (6)(b).

History: **En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(5); amd. Sec. 85, Ch. 571, L. 1979; amd. Sec. 1, Ch. 437, L. 1983; amd. Sec. 8, Ch. 591, L. 1991; amd. Sec. 5, Ch. 390, L. 1993; amd. Sec. 2, Ch. 458, L. 2007; amd. Sec. 6, Ch. 292, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 292 in (2) at end substituted "the applicable deadline established in 13-10-201(6)(a) or (6)(b)" for "the deadline established in 13-10-201(6)". Amendment effective October 1, 2009.

Cross-References

Officers for filing of petitions — filing deadline for primary elections, 13-10-201.

13-10-504. Independent or minor party candidates for president or vice president. (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 shall file a petition for nomination with the secretary of state 76 days prior to the date of the general election.

(2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less. The names of the candidates for the required number of presidential electors

allowable to Montana must be certified to the secretary of state no later than 76 days before the general election.

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice presidential candidate until the filing date provided in 13-25-101.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(6); amd. Sec. 86, Ch. 571, L. 1979; amd. Sec. 6, Ch. 390, L. 1993; amd. Sec. 1, Ch. 193, L. 1999; amd. Sec. 4, Ch. 537, L. 2001.

Cross-References

Times for holding general elections, 13-1-104.

13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(7); amd. Sec. 87, Ch. 571, L. 1979; amd. Sec. 9, Ch. 3, L. 1985.

13-10-506. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 6, 2nd Ex. L. 1971; R.C.M. 1947, 23-3318.1.

13-10-507. Independent candidates — association with political parties not allowed. (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of the person's nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation.

History: En. Sec. 9, Ch. 591, L. 1991; amd. Sec. 43, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 6
Nominations by Primary Election

13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Each political party that had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) (a) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election.

(b) The petition must be signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less. The number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less.

(c) At least 1 week before the deadline provided in subsection (2)(d), the petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.

(d) The election administrator shall forward the verified petition to the secretary of state at least 85 days before the date of the primary.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(1); amd. Sec. 88, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1981; amd. Sec. 30, Ch. 250, L. 1985; amd. Sec. 1, Ch. 196, L. 1991; amd. Sec. 7, Ch. 390, L. 1993; amd. Sec. 2, Ch. 193, L. 1999; amd. Sec. 13, Ch. 273, L. 2007; amd. Sec. 7, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (2)(c) near beginning before "deadline" deleted "filing"; in (2)(d) substituted "85 days" for "75 days"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Nominations by parties unable to meet requirements of this section, Title 13, ch. 10, part 5.

Nomination of presidential electors, 13-25-101.

13-10-602. Use of party name. (1) A political party and its regularly nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. A candidate for office may not use any word of the name of any other political party or organization other than that by which the candidate is nominated.

(2) An independent or nonpartisan candidate may not use any word of the name of any existing political party or organization in the candidacy.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(2), (3); amd. Sec. 44, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-10-603. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(4).

13-10-604. Nominations for minor parties. Any political party that does not qualify under the provisions of 13-10-601 may make nominations for public office as provided in 13-10-501 through 13-10-505.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(5); amd. Sec. 89, Ch. 571, L. 1979.

CHAPTER 11
ELECTION PROCLAMATION
(Repealed)

Part 1 — Election Proclamation
(Repealed)

Part 1
Election Proclamation
(Repealed)

13-11-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 13, Ch. 368, L. 1969; amd. Sec. 7, Ch. 365, L. 1977; R.C.M. 1947, 23-2901.

13-11-102. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 14, Ch. 368, L. 1969; R.C.M. 1947, 23-2902.

13-11-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 15, Ch. 368, L. 1969; R.C.M. 1947, 23-2903.

CHAPTER 12
ELECTION SUPPLIES AND BALLOTS

Part 1 — Election Supplies

13-12-101. Copies of election laws to be furnished.
13-12-102. Items to be furnished by election administrators.
13-12-103. Repealed.
13-12-104. Repealed.
13-12-105. Repealed.

Part 2 — Ballots

13-12-201. Secretary of state to certify ballot.
13-12-202. Ballot form and uniformity.
13-12-203. Appearance of candidate's name and party designation on ballot.
13-12-204. Method of correction of ballot.
13-12-205. Arrangement of names — rotation on ballot.
13-12-206. Repealed.
13-12-207. Order of placement.
13-12-208. Repealed.
13-12-209. Repealed.
13-12-210. Number of ballots to be provided for each precinct.
13-12-211. Repealed.
13-12-212. Election administrator to provide official ballots — other ballots prohibited.
13-12-213. Repealed.
13-12-214. Sample ballots.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Criminal provisions relating to election supplies and ballots, Title 13, ch. 35.

Part 1
Election Supplies

13-12-101. Copies of election laws to be furnished. The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in the administrator's county with two copies and to provide a small extra supply for the administrator.

History: (1)En. Sec. 16, Ch. 368, L. 1969; Sec. 23-2904, R.C.M. 1947; (2)En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977; Sec. 23-4794, R.C.M. 1947; R.C.M. 1947, 23-2904, 23-4794; amd. Sec. 90, Ch. 571, L. 1979; amd. Sec. 1, Ch. 121, L. 1983; amd. Sec. 1, Ch. 113, L. 1993.

13-12-102. Items to be furnished by election administrators. The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

History: Ap.p. Sec. 84, Ch. 368, L. 1969; Sec. 23-3501, R.C.M. 1947; Ap.p. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R.C.M. 1921; Cal. Pol. C. Sec. 4064; re-en. Sec. 4515, R.C.M. 1935; Sec. 16-1156, R.C.M. 1947; R.C.M. 1947, 16-1156, 23-3501; amd. Sec. 91, Ch. 571, L. 1979.

13-12-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 85, Ch. 368, L. 1969; R.C.M. 1947, 23-3502.

13-12-104. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 86, Ch. 368, L. 1969; R.C.M. 1947, 23-3503.

13-12-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 87, Ch. 368, L. 1969; R.C.M. 1947, 23-3504.

Part 2
Ballots

Part Cross-References

Election on question of creating new county — form of ballot, 7-2-2218.

13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before a federal general election, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979; amd. Sec. 31, Ch. 250, L. 1985; amd. Sec. 4, Ch. 74, L. 1993; amd. Sec. 21, Ch. 414, L. 2003; amd. Sec. 8, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (1) near beginning substituted "before a federal general election" for "before an election, except as provided in 13-10-208". Amendment effective October 1, 2009.

13-12-202. Ballot form and uniformity. (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

(a) the manner in which each type of ballot may be corrected under 13-12-204;
(b) what provisions must be made on the ballot for write-in candidates;
(c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
(d) how unvoted ballots must be handled;
(e) how the number of individuals voting and the number of ballots cast must be recorded; and
(f) the order and arrangement of voting system ballots.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(2).

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979; amd. Sec. 22, Ch. 414, L. 2003.

Cross-References

Nonpartisan candidates to appear on ballots, 13-14-117.

13-12-203. Appearance of candidate's name and party designation on ballot. (1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite the name.

(2) Subject to 13-12-202, in nonpartisan elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the words "Nominated without party designation".

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979; amd. Sec. 23, Ch. 414, L. 2003.

13-12-204. Method of correction of ballot. If an appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy for governor, as provided in 13-10-328, after the ballots have been prepared but before the election, the election administrator may:

(1) correct the ballot in a manner consistent with rules adopted under 13-12-202;
(2) have the entire ballot redone; or
(3) have a separate ballot prepared only for the office for which the new candidate is a candidate.

History: En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979; amd. Sec. 3, Ch. 85, L. 1997; amd. Sec. 24, Ch. 414, L. 2003.

13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.

(2) (a) If two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate the names of the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.

(e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

History: En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979; amd. Sec. 1, Ch. 576, L. 1985; amd. Sec. 25, Ch. 414, L. 2003; amd. Sec. 14, Ch. 273, L. 2007.

Cross-References

Arrangement of ballot in primary election, 13-10-209.

Arrangement of names in conservation district election, 76-15-303.

13-12-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 95, Ch. 368, L. 1969; amd. Sec. 28, Ch. 365, L. 1977; R.C.M. 1947, 23-3512.

13-12-207. Order of placement. (1) The order on the ballot for state and federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

(b) United States senator;
(c) United States representative;
(d) governor and lieutenant governor;
(e) secretary of state;
(f) attorney general;
(g) state auditor;
(h) state superintendent of public instruction;
(i) public service commissioners;
(j) clerk of the supreme court;
(k) chief justice of the supreme court;
(l) justices of the supreme court;
(m) district court judges;
(n) state senators;
(o) members of the house of representatives.

(2) The following order of placement must be observed for county offices:
(a) clerk of the district court;
(b) county commissioner;
(c) county clerk and recorder;
(d) sheriff;
(e) coroner;
(f) county attorney;
(g) county superintendent of schools;
(h) county auditor;
(i) public administrator;
(j) county assessor;
(k) county treasurer;
(l) surveyor;
(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term.

History: **Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947; Ap. p. Sec. 100, Ch. 368, L. 1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979; amd. Sec. 13, Ch. 7, L. 2001; amd. Sec. 15, Ch. 273, L. 2007.**

13-12-208. Repealed. Sec. 91, Ch. 414, L. 2003.

History: **En. Sec. 97, Ch. 368, L. 1969; R.C.M. 1947, 23-3514; amd. Sec. 98, Ch. 571, L. 1979.**

13-12-209. Repealed. Sec. 91, Ch. 414, L. 2003.

History: **En. Sec. 98, Ch. 368, L. 1969; amd. Sec. 1, Ch. 414, L. 1975; amd. Sec. 30, Ch. 365, L. 1977; R.C.M. 1947, 23-3515; amd. Sec. 99, Ch. 571, L. 1979.**

13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in the administrator's office showing the exact number of ballots that are delivered to the election judges of each precinct.

History: **En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979; amd. Sec. 45, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-12-211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 90, Ch. 368, L. 1969; R.C.M. 1947, 23-3507.**

13-12-212. Election administrator to provide official ballots — other ballots prohibited. Each election administrator shall provide the official ballots for every election conducted by the election administrator. A ballot other than an official ballot may not be cast or counted in any election.

History: **En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979; amd. Sec. 26, Ch. 414, L. 2003.**

Cross-References

Ballot form for ballot issues, 13-27-501.

13-12-213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(1) thru (3).**

13-12-214. Sample ballots. The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

History: **En. Sec. 102, Ch. 571, L. 1979.**

Cross-References

Sample ballots on question of creating new county, 7-2-2219.

CHAPTER 13
ELECTION PROCEDURE

Part 1 — Procedure at Polling Place

13-13-101. Duties — proclamation prior to opening and closing polls.
13-13-102. Repealed.
13-13-103. Repealed.
13-13-104. Repealed.
13-13-105. Repealed.
13-13-106. Repealed.
13-13-107. Repealed.
13-13-108. Repealed.
13-13-109. Repealed.
13-13-110. Repealed.
13-13-111. Provision and use of voting stations.
13-13-112. Display of instructions for electors.
13-13-113. Warning notice to be posted.
13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting.
13-13-115. Recording number of voters and ballots.
13-13-116. Paper ballots to be marked — one ballot to elector.
13-13-117. Method of voting.

13-13-118. Taking ballot to disabled elector.
13-13-119. Aid to disabled elector.
13-13-120. Poll watchers — announcement of elector's name.
13-13-121. Additional poll watchers.
13-13-122. Preventing obstructions.

Part 2 — Procedure for Electors Absent From the Polling Place

13-13-201. Voting by absentee ballot — procedures.
13-13-202. Repealed.
13-13-203. Repealed.
13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death.
13-13-205. When ballots to be available.
13-13-206 through 13-13-210 reserved.
13-13-211. Time period for application.
13-13-212. Application for absentee ballot — special provisions.
13-13-213. Transmission of application to election administrator — delivery of ballot.
13-13-214. Mailing absentee ballot to elector — delivery to person other than elector.
13-13-215 through 13-13-220 reserved.
13-13-221. Repealed.
13-13-222. Marking ballot before election day.
13-13-223 and 13-13-224 reserved.
13-13-225. Special absentee election boards — members — appointment.
13-13-226. Manner of selection.
13-13-227. Oath of board members.
13-13-228. Compensation.
13-13-229. Voting performed before special absentee election board.
13-13-230. Authorization to increase county mill levy.
13-13-231. Disposition of marked ballot upon receipt by election administrator.
13-13-232. Delivery of ballots and secrecy envelopes to election judges — ballots to be rejected.
13-13-233. Issuing and recording absentee ballots — certificate to election judges.
13-13-234. Duty of election judges — pollbook.
13-13-235. Renumbered 13-13-241.
13-13-236. Renumbered 13-13-243.
13-13-237. Repealed.
13-13-238. Repealed.
13-13-239. Renumbered 13-13-244.
13-13-240. Repealed.
13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots.
13-13-242. Repealed.
13-13-243. Renumbered 13-15-108.
13-13-244. Opening of return envelopes after deposit.
13-13-245 through 13-13-269 reserved.
13-13-270. Absentee voting provisions for United States electors supersede.
13-13-271. Renumbered 13-21-204.
13-13-272. Renumbered 13-21-205.
13-13-273. Renumbered 13-21-206.
13-13-274 and 13-13-275 reserved.
13-13-276. Repealed.
13-13-277. Renumbered 13-21-207.
13-13-278. Renumbered 13-21-104.
13-13-279. Repealed.

Part 3 — Challenges

13-13-301. Challenges.
13-13-302. Repealed.
13-13-303. Repealed.
13-13-304. Repealed.
13-13-305. Repealed.
13-13-306. Repealed.
13-13-307. Repealed.
13-13-308. Repealed.
13-13-309. Repealed.
13-13-310. Repealed.
13-13-311. Repealed.

Parts 4 and 5 reserved

Part 6 — Provisional Voting—Rulemaking
13-13-601. Provisional voting in person.
13-13-602. Fail-safe and provisional voting by mail.
13-13-603. Rulemaking on provisional voting, absentee ballots, and challenged ballots.

Chapter Cross-References

Suffrage and elections, Art. IV, Mont. Const.
Definitions applicable to this chapter, 13-1-101.
Criminal provisions relating to election procedures, Title 13, ch. 35.
School elections, Title 20, ch. 20.

Part 1

Procedure at Polling Place

Part Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

13-13-101. Duties — proclamation prior to opening and closing polls. (1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969; R.C.M. 1947, 23-3602; amd. Sec. 103, Ch. 571, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.
Oath of election judges, 13-4-105.

13-13-102. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 101, Ch. 368, L. 1969; R.C.M. 1947, 23-3601.

13-13-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 103, Ch. 368, L. 1969; R.C.M. 1947, 23-3603.

13-13-104. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 110, Ch. 368, L. 1969; amd. Sec. 3, Ch. 254, L. 1971; amd. Sec. 32, Ch. 365, L. 1977; R.C.M. 1947, 23-3610.

13-13-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 104, Ch. 368, L. 1969; R.C.M. 1947, 23-3604.

13-13-106. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 106, Ch. 368, L .1969; amd. Sec. 31, Ch. 365, L. 1977; R.C.M. 1947, 23-3606.

13-13-107. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 107, Ch. 368, L. 1969; amd. Sec. 42, Ch. 334, L. 1977; Sec. 23-3607, R.C.M. 1947; (2)En. Sec. 108, Ch. 368, L. 1969; Sec. 23-3608, R.C.M. 1947; R.C.M. 1947, 23-3607, 23-3608.

13-13-108. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 109, Ch. 368, L. 1969; R.C.M. 1947, 23-3609.

13-13-109. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 118, Ch. 368, L. 1969; R.C.M. 1947, 23-3618.

13-13-110. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 105, Ch. 368, L. 1969; amd. Sec. 41, Ch. 334, L. 1977; R.C.M. 1947, 23-3605.

13-13-111. Provision and use of voting stations. (1) The election administrator shall provide a sufficient number of voting stations to allow voting to proceed with as little delay as possible.

(2) Voting stations must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted.

(3) No more than one individual may occupy a voting station at one time, except when assistance is furnished to an elector as provided by law.

(4) An individual may not occupy a voting station longer than is reasonably necessary to prepare the elector's ballot, after which the election judges may eject the elector from the station.

History: **En. Sec. 104, Ch. 571, L. 1979; amd. Sec. 27, Ch. 414, L. 2003.**

Cross-References

Secret ballot requirement, Art. IV, sec. 1, Mont. Const.

Provisions relating to disabled electors, 13-13-118, 13-13-119.

Criminal provisions relating to ballot secrecy, 13-35-201, 13-35-202.

13-13-112. Display of instructions for electors. (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

(a) how to obtain ballots for voting;

(b) how to prepare ballots, including how to:

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

(iii) ensure the proper disposition of the ballot after the elector is finished voting;

(c) how to obtain a new ballot in place of one spoiled by accident;

(d) how to vote provisionally pursuant to 13-13-601;

(e) the election date and the hours the polls are open; and

(f) instructions for first-time voters who registered by mail.

(3) If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

(4) Official ballots, clearly marked "sample" across the face, must be posted at each voting station and in conspicuous places around the polling place.

History: **En. Sec. 105, Ch. 571, L. 1979; amd. Sec. 13, Ch. 200, L. 1987; amd. Sec. 28, Ch. 414, L. 2003; amd. Sec. 20, Ch. 475, L. 2003.**

Cross-References

Criminal provisions relating to injury to election materials, 13-35-206.

13-13-113. Warning notice to be posted. Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

History: **En. Sec. 106, Ch. 571, L. 1979.**

13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting. (1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote.

(d) An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(2) If the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

(3) If the elector fails or refuses to sign the elector's name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to 13-1-116 is not provided, the elector may cast a provisional ballot as provided in 13-13-601.

History: En. Sec. 107, Ch. 571, L. 1979; amd. Sec. 10, Ch. 591, L. 1991; amd. Sec. 21, Ch. 475, L. 2003; amd. Sec. 3, Ch. 367, L. 2005.

13-13-115. Recording number of voters and ballots. The election administrator in each precinct shall use a precinct register, pollbook, or some other method to record the number of individuals voting and the number of ballots cast that conforms to the method prescribed by the secretary of state in accordance with rules adopted pursuant to 13-12-202.

History: En. Sec. 108, Ch. 571, L. 1979; amd. Sec. 11, Ch. 591, L. 1991; amd. Sec. 29, Ch. 414, L. 2003.

13-13-116. Paper ballots to be marked — one ballot to elector. (1) Before delivering a paper ballot to an elector, the election judges shall ensure that the ballot is marked with the words "official ballot" without part of the mark appearing on the stub, if any. The election judges shall also ensure that the ballot is marked with the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector must receive from the election judges one of each type of ballot being used at the election.

History: En. Sec. 109, Ch. 571, L. 1979; amd. Sec. 6, Ch. 298, L. 1987; amd. Sec. 8, Ch. 390, L. 1993; amd. Sec. 30, Ch. 414, L. 2003.

Cross-References

Stamping of absentee ballot, 13-13-214.

13-13-117. Method of voting. (1) (a) After marking the precinct register pursuant to 13-13-115 and receiving a ballot, an elector shall immediately retire to a voting station and prepare the elector's ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.

(b) An election judge or voting system shall place the ballot in the ballot box immediately without allowing anyone to examine the ballot. Nothing other than a ballot may be put in a ballot box.

History: En. Sec. 110, Ch. 571, L. 1979; amd. Sec. 7, Ch. 298, L. 1987; amd. Sec. 2, Ch. 391, L. 1989; amd. Sec. 1, Ch. 134, L. 2001; amd. Sec. 31, Ch. 414, L. 2003; amd. Sec. 16, Ch. 273, L. 2007.

Cross-References

Declaration of intent for write-in candidates, 13-10-211.

13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce that the judge has "a ballot offered by ...... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If an objection is not heard, the judge shall remove the stub and place the ballot and stub in the

proper boxes. Any challenge to the elector's right to vote must be resolved as provided in Title 13, chapter 13, part 3.

History: En. Sec. 111, Ch. 571, L. 1979; amd. Sec. 46, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-13-119. Aid to disabled elector. (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.

(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector's ballot.

(3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

(4) The elector may be assisted by two judges who represent different parties. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.

(6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

History: En. Sec. 112, Ch. 571, L. 1979; amd. Sec. 8, Ch. 298, L. 1987; amd. Sec. 4, Ch. 367, L. 2005.

13-13-120. Poll watchers — announcement of elector's name. The election judges shall permit one poll watcher from each political party to be stationed close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs the elector's name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers must also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

History: En. Sec. 113, Ch. 571, L. 1979; amd. Sec. 47, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-13-121. Additional poll watchers. A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

History: En. Sec. 114, Ch. 571, L. 1979.

13-13-122. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

History: En. Sec. 115, Ch. 571, L. 1979.

Cross-References

Electors — privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

Part 2
Procedure for Electors Absent From the Polling Place

Part Cross-References

Registration and voting by facsimile authorized, 13-21-207.

13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the affidavit printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to the election administrator or, pursuant to 13-13-229, to the special absentee election board.

(3) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

History: En. Sec. 119, Ch. 368, L. 1969; R.C.M. 1947, 23-3701; amd. Sec. 116, Ch. 571, L. 1979; amd. Sec. 1, Ch. 239, L. 1985; amd. Sec. 1, Ch. 242, L. 1997; amd. Sec. 1, Ch. 151, L. 1999; amd. Sec. 32, Ch. 414, L. 2003; amd. Sec. 25, Ch. 475, L. 2003; amd. Sec. 7, Ch. 286, L. 2005; amd. Sec. 17, Ch. 273, L. 2007.

13-13-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 132, Ch. 368, L. 1969; R.C.M. 1947, 23-3714.

13-13-203. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 134, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(1), (2); amd. Sec. 117, Ch. 571, L. 1979; amd. Sec. 2, Ch. 239, L. 1985; amd. Sec. 33, Ch. 414, L. 2003.

13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) (a) If an elector has received but not voted an absentee ballot and the absentee ballot contains printing errors or omissions, the elector may receive a replacement or corrected ballot and vote in person at the election administrator's office.

(b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.

(3) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted.

History: En. Sec. 127, Ch. 571, L. 1979; amd. Sec. 2, Ch. 120, L. 1983; amd. Sec. 9, Ch. 298, L. 1987; amd. Sec. 4, Ch. 85, L. 1997; amd. Sec. 26, Ch. 475, L. 2003; amd. Sec. 1, Ch. 359, L. 2005; amd. Sec. 1, Ch. 217, L. 2009; amd. Sec. 19, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 217 in (1)(a) near beginning substituted "received but not voted an absentee" for "voted by absentee", near middle following "omissions" deleted "except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission", following "elector may" inserted "receive a replacement or corrected ballot and", following "vote in person" substituted "at the election administrator's office" for "in any manner at the elector's polling place"; inserted (1)(b) regarding the death of a candidate; and made minor changes in style. Amendment effective April 15, 2009.

Chapter 297 in (1)(a) near beginning substituted "has received an absentee ballot" for "has voted by absentee ballot" and at end substituted "may receive a corrected ballot and vote in person at the election administrator's office" for "may vote in person in any manner at the elector's polling place". Amendment effective October 1, 2009.

13-13-205. When ballots to be available. (1) Except as provided in subsection (2), the election administrator shall ensure that ballots are available for voting at least:

(a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);

(b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

(c) 30 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot requested pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with 13-1-104(1).

History: En. Sec. 2, Ch. 586, L. 1983; amd. Sec. 32, Ch. 250, L. 1985; amd. Sec. 10, Ch. 298, L. 1987; amd. Sec. 34, Ch. 414, L. 2003; amd. Sec. 27, Ch. 475, L. 2003; amd. Sec. 8, Ch. 286, L. 2005; amd. Sec. 18, Ch. 273, L. 2007; amd. Sec. 20, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) at beginning inserted exception clause and after "are" substituted "available for voting" for "printed"; in (1)(c) reduced time from 45 days to 30 days; in (2) near beginning after "ballot" deleted "may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot", after "chapter 21" substituted "must" for "may", and at end inserted "or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with 13-1-104(1)"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Voting by prospective absentee or physically incapacitated elector, 13-13-222.

13-13-206 through 13-13-210 reserved.

13-13-211. Time period for application. (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in 13-13-212(2).

History: En. Sec. 121, Ch. 368, L. 1969; amd. Sec. 1, Ch. 145, L. 1975; R.C.M. 1947, 23-3703; amd. Sec. 118, Ch. 571, L. 1979; amd. Sec. 3, Ch. 239, L. 1985; amd. Sec. 4, Ch. 396, L. 1985; amd. Sec. 14, Ch. 200, L. 1987; amd. Sec. 12, Ch. 472, L. 1997; amd. Sec. 2, Ch. 151, L. 1999; amd. Secs. 35, 93(2)(a), Ch. 414, L. 2003; amd. Sec. 13, Ch. 130, L. 2005.

Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.

History: En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975; R.C.M. 1947, 23-3704; amd. Sec. 119, Ch. 571, L. 1979; amd. Sec. 4, Ch. 239, L. 1985; amd. Sec. 12, Ch. 591, L. 1991; amd. Sec. 6, Ch. 85, L. 1997; amd. Sec. 2, Ch. 164, L. 1999; amd. Sec. 36, Ch. 414, L. 2003; amd. Secs. 14, 25, Ch. 557, L. 2003; amd. Sec. 1, Ch. 284, L. 2005; amd. Sec. 9, Ch. 286, L. 2005; amd. Sec. 11, Ch. 586, L. 2005; amd. Sec. 1, Ch. 221, L. 2007; amd. Sec. 1, Ch. 358, L. 2007; amd. Sec. 1, Ch. 219, L. 2009; amd. Sec. 21, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 219 in (4)(b) in first sentence after "January" deleted "and July", and in second sentence near beginning after "form" deleted "mailed in January" and after "through" deleted "July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through". Amendment effective April 15, 2009.

Chapter 297 in (4)(a) at beginning substituted "An elector may at any time request" for "When applying for an absentee ballot under this section, an elector may also request", after "absentee ballot" deleted "as soon as the ballot becomes available"; in (4)(b) before "address" inserted "forwardable"; and made minor changes in style. Amendment effective October 1, 2009.

13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection (5), the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) (a) The election administrator shall compare the signature on the application with the applicant's signature on the registration card or the agent's signature on the agent designation form. If convinced that the individual making the application is the same as the one whose name appears on the registration card or the agent designation form, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(b) If the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration card or agent designation form, the election administrator shall notify the elector or agent, either by mail or by the most expedient method available under rules adopted by the secretary of state, and inform the elector or agent that the elector or agent may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(4) If an election administrator cannot verify the signature, a ballot may not be provided to the elector.

(5) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card or agent designation form to be provided by the election administrator. If the special absentee election board believes

that the applicant is the same person as the one whose name appears on the registration card or agent designation form, the special absentee election board shall provide a ballot to the elector when the ballot is available pursuant to 13-13-205.

History: **En. Sec. 123, Ch. 368, L. 1969; R.C.M. 1947, 23-3705; amd. Sec. 120, Ch. 571, L. 1979; amd. Sec. 5, Ch. 239, L. 1985; amd. Sec. 1, Ch. 203, L. 1995; amd. Sec. 1, Ch. 367, L. 2003; amd. Sec. 15, Ch. 557, L. 2003; amd. Sec. 10, Ch. 286, L. 2005; amd. Sec. 5, Ch. 367, L. 2005; amd. Sec. 19, Ch. 273, L. 2007; amd. Sec. 22, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (3)(a) in first sentence at end inserted "or the agent's signature on the agent designation form" and in second sentence after "card" inserted "or the agent designation form"; inserted (3)(b) providing for verification of signature with election administrator; inserted (4) providing that a ballot may not be provided if election administrator cannot verify the signature; in (5) in second and third sentences after "card" inserted "or agent designation form" and in third sentence at end substituted "when the ballot is available pursuant to 13-13-205" for "subject to 13-13-205"; and made minor changes in style. Amendment effective October 1, 2009.

13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);

(b) a secrecy envelope, free of any marks that would identify the voter; and

(c) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet.

History: **En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975; R.C.M. 1947, 23-3706; amd. Sec. 121, Ch. 571, L. 1979; amd. Sec. 1, Ch. 110, L. 1983; amd. Sec. 1, Ch. 119, L. 1995; amd. Sec. 2, Ch. 203, L. 1995; amd. Sec. 2, Ch. 242, L. 1997; amd. Secs. 37, 93(2)(b), Ch. 414, L. 2003; amd. Sec. 30, Ch.**

475, L. 2003; amd. Sec. 2, Ch. 284, L. 2005; amd. Sec. 6, Ch. 367, L. 2005; amd. Sec. 20, Ch. 273, L. 2007; amd. Sec. 23, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(a) after "administrator shall" deleted "no sooner than authorized in 13-13-205"; inserted (1)(b) establishing deadlines for mailing ballots by election administrator; and made minor changes in style. Amendment effective October 1, 2009.

13-13-215 through 13-13-220 reserved.

13-13-221. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975; R.C.M. 1947, 23-3707; amd. Sec. 122, Ch. 571, L. 1979; amd. Sec. 6, Ch. 239, L. 1985; amd. Sec. 3, Ch. 242, L. 1997.

13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.

(4) The ballot is considered voted at the time it is received by the election administrator.

History: En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975; R.C.M. 1947, 23-3712; amd. Sec. 123, Ch. 571, L. 1979; amd. Sec. 1, Ch. 586, L. 1983; amd. Sec. 7, Ch. 239, L. 1985; amd. Sec. 3, Ch. 151, L. 1999; amd. Sec. 38, Ch. 414, L. 2003; amd. Sec. 24, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 inserted (4) providing that ballots are considered voted when received by election administrator. Amendment effective October 1, 2009.

Cross-References

When ballots to be available, 13-13-205.
Disposition of absentee ballot, 13-13-231.

13-13-223 and 13-13-224 reserved.

13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding general election. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

History: En. Sec. 10, Ch. 239, L. 1985; amd. Sec. 4, Ch. 242, L. 1997; amd. Sec. 4, Ch. 151, L. 1999; amd. Sec. 48, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-13-226. Manner of selection. The election administrator shall make appointments to the special absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of a special absentee election board.

History: En. Sec. 11, Ch. 239, L. 1985.

13-13-227. Oath of board members. Before assuming any of the responsibilities under this part, each member of a special absentee election board shall take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

History: En. Sec. 12, Ch. 239, L. 1985; amd. Sec. 49, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

13-13-228. Compensation. (1) Each member of a special absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of a special absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

History: En. Sec. 13, Ch. 239, L. 1985.

13-13-229. Voting performed before special absentee election board. (1) Pursuant to 13-13-212(2), the elector may request that a special absentee election board personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-201, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

History: En. Sec. 14, Ch. 239, L. 1985; amd. Sec. 5, Ch. 242, L. 1997; amd. Sec. 5, Ch. 151, L. 1999; amd. Sec. 39, Ch. 414, L. 2003; amd. Sec. 17, Ch. 557, L. 2003.

13-13-230. Authorization to increase county mill levy. Subject to 15-10-420, a county may levy an amount necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. The mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229.

History: En. Sec. 15, Ch. 239, L. 1985; amd. Sec. 79, Ch. 584, L. 1999; amd. Sec. 91, Ch. 574, L. 2001.

13-13-231. Disposition of marked ballot upon receipt by election administrator. (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the unopened return envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

History: En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977; R.C.M. 1947, 23-3708; amd. Sec. 124, Ch. 571, L. 1979; amd. Sec. 6, Ch. 242, L. 1997.

13-13-232. Delivery of ballots and secrecy envelopes to election judges — ballots to be rejected. (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall process it according to 13-13-241 and then deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be

rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-15-108(1).

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(1) thru (3); amd. Sec. 125, Ch. 571, L. 1979; amd. Sec. 8, Ch. 239, L. 1985; amd. Sec. 7, Ch. 242, L. 1997; amd. Sec. 6, Ch. 151, L. 1999; amd. Sec. 31, Ch. 475, L. 2003; amd. Sec. 11, Ch. 286, L. 2005.

13-13-233. Issuing and recording absentee ballots — certificate to election judges. (1) Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed or transmitted pursuant to 13-13-214 or 13-21-207, delivered pursuant to 13-13-229, or marked in person pursuant to 13-13-222;

(b) the number of ballots to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

History: En. Sec. 128, Ch. 368, L. 1969; R.C.M. 1947, 23-3710; amd. Sec. 126, Ch. 571, L. 1979; amd. Sec. 3, Ch. 120, L. 1983; amd. Sec. 42, Ch. 414, L. 2003; amd. Sec. 12, Ch. 286, L. 2005.

13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall:

(a) note on the pollbook opposite the appropriate ballot numbers the fact that the ballots were issued as absentee ballots; and

(b) reserve the numbers for electors who may vote late under 13-13-211(2).

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate provided by the election administrator pursuant to 13-13-233(3) and the number of the elector's ballot.

History: En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977; R.C.M. 1947, 23-3711; amd. Sec. 128, Ch. 571, L. 1979; amd. Sec. 9, Ch. 239, L. 1985; amd. Sec. 43, Ch. 414, L. 2003.

13-13-235. Renumbered 13-13-241. Code Commissioner, 1979.

13-13-236. Renumbered 13-13-243. Code Commissioner, 1979.

13-13-237. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(10).

13-13-238. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(11).

13-13-239. Renumbered 13-13-244. Code Commissioner, 1979.

13-13-240. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(4).

13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the election administrator shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.

(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107.

(8) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(1) thru (6); amd. Sec. 129, Ch. 571, L. 1979; Sec. 13-13-235, MCA 1979; redes. 13-13-241 by Code Commissioner, 1979; amd. Sec. 11, Ch. 298, L. 1987; amd. Sec. 8, Ch. 242, L. 1997; amd. Sec. 32, Ch. 475, L. 2003; amd. Sec. 13, Ch. 286, L. 2005; amd. Sec. 21, Ch. 273, L. 2007; amd. Sec. 25, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(a) after "elector" inserted "or elector's agent"; in (1)(c)(i), (1)(c)(ii), (1)(c)(iii), and (4) after "identification" inserted reference to eligibility; in (5) near beginning after "request form" substituted requirement for notice to elector of method for signature verification for "the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1)"; inserted (6) allowing for signature verification by affirmation or by completion of new registration card; inserted (7) providing that elector's ballot must be treated as provisional if not verified; and made minor changes in style. Amendment effective October 1, 2009.

13-13-242. Repealed. Sec. 20, Ch. 298, L. 1987.

History: En. Sec. 130, Ch. 571, L. 1979.

13-13-243. Renumbered 13-15-108. Sec. 20, Ch. 286, L. 2005.

13-13-244. Opening of return envelopes after deposit. If a return envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the return envelope must be processed as provided in 13-13-241.

History: En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977; R.C.M. 1947, 23-3715; Sec. 13-16-239, MCA 1979; redes. 13-13-244 by Code Commissioner; amd. Secs. 45, 93(3)(d), Ch. 414, L. 2003.

13-13-245 through 13-13-269 reserved.

13-13-270. Absentee voting provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with Title 13, chapter 21.

History: En. Sec. 9, Ch. 557, L. 2003.

13-13-271. Renumbered 13-21-204. Sec. 24(2), Ch. 557, L. 2003.

13-13-272. Renumbered 13-21-205. Sec. 24(2), Ch. 557, L. 2003.

13-13-273. Renumbered 13-21-206. Sec. 24(2), Ch. 557, L. 2003.

13-13-274 and 13-13-275 reserved.

13-13-276. Repealed. Sec. 23, Ch. 557, L. 2003.
History: En. Sec. 1, Ch. 111, L. 1991; amd. Sec. 48, Ch. 42, L. 1997; amd. Sec. 1, Ch. 80, L. 1999.

13-13-277. Renumbered 13-21-207. Sec. 24(2), Ch. 557, L. 2003.

13-13-278. Renumbered 13-21-104. Sec. 24(2), Ch. 557, L. 2003.

13-13-279. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 3, Ch. 111, L. 1991.

Part 3
Challenges

13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this section:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within 5 days of the filing of the challenge if the election is more than 5 days away; or

(ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors.

History: (1)En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2)En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979; amd. Sec. 33, Ch. 475, L. 2003; amd. Sec. 12, Ch. 586, L. 2005; amd. Sec. 26, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (4)(b) near middle after "challenged elector" deleted "as soon as possible" and inserted second sentence and (4)(b)(i) and (4)(b)(ii) providing when notification must be made; in (4)(c) deleted second sentence that read: "If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References
Qualified elector, Art. IV, sec. 2, Mont. Const.
Challenges in school elections, 20-20-303.
Definition of felony, 45-2-101.
Effect of conviction, 46-18-801.
Mentally ill individuals, Title 53, ch. 21.
Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-13-302. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 27, Init. Act, Nov. 1912; re-en. Sec. 10792, R.C.M. 1921; re-en. Sec. 10792, R.C.M. 1935; Sec. 94-1446, R.C.M. 1947; redes. 23-4746 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 45, Ch. 334, L. 1977; R.C.M. 1947, 23-4746.

13-13-303. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(2).

13-13-304. Repealed. Sec. 44, Ch. 475, L. 2003.
History: Ap. p. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; Ap. p. Sec. 114, Ch. 368, L. 1969; Sec. 23-3614, R.C.M. 1947; R.C.M. 1947, 23-3015(4), 23-3614; amd. Sec. 134, Ch. 571, L. 1979.

13-13-305. Repealed. Sec. 44, Ch. 475, L. 2003.
History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(5).

13-13-306. Repealed. Sec. 44, Ch. 475, L. 2003.
History: En. Sec. 112, Ch. 368, L. 1969; amd. Sec. 34, Ch. 365, L. 1977; R.C.M. 1947, 23-3612; amd. Sec. 135, Ch. 571, L. 1979.

13-13-307. Repealed. Sec. 44, Ch. 475, L. 2003.
History: En. Sec. 113, Ch. 368, L. 1969; amd. Sec. 35, Ch. 365, L. 1977; R.C.M. 1947, 23-3613; amd. Sec. 136, Ch. 571, L. 1979.

13-13-308. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 115, Ch. 368, L. 1969; R.C.M. 1947, 23-3615.

13-13-309. Repealed. Sec. 44, Ch. 475, L. 2003.
History: En. Sec. 116, Ch. 368, L. 1969; R.C.M. 1947, 23-3616; amd. Sec. 137, Ch. 571, L. 1979.

13-13-310. Repealed. Sec. 44, Ch. 475, L. 2003.
History: En. Sec. 117, Ch. 368, L. 1969; R.C.M. 1947, 23-3617; amd. Sec. 138, Ch. 571, L. 1979.

13-13-311. Repealed. Sec. 44, Ch. 475, L. 2003.
History: En. Sec. 133, Ch. 571, L. 1979; amd. Sec. 12, Ch. 298, L. 1987.

Parts 4 and 5 reserved

Part 6
Provisional Voting — Rulemaking

13-13-601. Provisional voting in person. (1) Before being given a ballot, an elector casting a provisional ballot:

(a) must be given information, in a form prescribed by the secretary of state, explaining how to vote provisionally, what information must be provided by the elector to verify the elector's eligibility, and how to determine whether the elector's provisional ballot is or is not counted and, if not, the reasons why;

(b) shall sign an affirmation in a form prescribed by the secretary of state swearing that, to the best of the elector's knowledge, the elector is eligible to vote in the election and precinct and is aware of the penalty for false swearing; and

(c) shall cast and return the provisional ballot to an election judge, who shall place the ballot into an envelope prescribed by the secretary of state for provisional ballots.

(2) A provisional ballot must be handled as provided in 13-15-107.

(3) An elector making a false affirmation under this section is subject to the penalty for false swearing provided in 45-7-202.

History: En. Sec. 22, Ch. 475, L. 2003.

13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(2) The elector's ballot must be handled as a provisional ballot under 13-15-107 if:

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);

(b) the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility; or

(c) the elector's name does not appear on the precinct register.

History: En. Sec. 23, Ch. 475, L. 2003; amd. Sec. 50, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-13-603. Rulemaking on provisional voting, absentee ballots, and challenged ballots. (1) The secretary of state shall adopt rules to:

(a) implement the provisions of 13-13-114 and this part concerning verification of voter identification and eligibility;

(b) establish standards for determining the sufficiency of information provided on absentee ballot return envelopes pursuant to 13-13-241;

(c) implement the provisions of 13-15-107 on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.

(2) The rules may not conflict with rules established under 13-2-109.

History: En. Sec. 24, Ch. 475, L. 2003.

CHAPTER 14
NONPARTISAN ELECTIONS

Part 1 — General Provisions

13-14-101. Repealed.
13-14-102. Repealed.
13-14-103. Repealed.
13-14-104. Repealed.
13-14-105 through 13-14-110 reserved.
13-14-111. Application of general laws.
13-14-112. Declarations for nomination — fee — filing.
13-14-113. Filing for offices without salary or fees.
13-14-114. Register of candidates.
13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary.
13-14-116. Counting and canvassing of nonpartisan ballots.
13-14-117. Placing names on ballots for general election.
13-14-118. Vacancies among nominees after nomination and before general election.

Part 2 — Judicial Offices

13-14-201. Repealed.
13-14-202. Repealed.
13-14-203. Repealed.
13-14-204. Repealed.
13-14-205. Repealed.
13-14-206. Repealed.
13-14-207. Repealed.
13-14-208. Repealed.
13-14-209 and 13-14-210 reserved.
13-14-211. Judicial offices separate and independent offices for election purposes.
13-14-212. Form of ballot on retention of certain incumbent judicial officers.
13-14-213. Form of ballot on retention for other judicial offices.

Chapter Cross-References

Vacancy in Judicial Nomination Commission, 3-1-1014.
Election of Supreme Court Justices, Title 3, ch. 2, part 1.
Election of Clerk of Supreme Court, 3-2-401.

Election of City Judge, 7-3-1342, 7-3-4462.
Vacancy on Board of County Commissioners, 7-4-2106.
Vacancy in county office, 7-4-2206.
Definitions applicable to this chapter, 13-1-101.

Part 1
General Provisions

Part Cross-References

Nonpartisan elections — local government, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-3-603, 7-3-704.
Election of officials of commission-manager government, 7-3-4341.

13-14-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1), (2)En. Sec. 225, Ch. 368, L. 1969; Sec. 23-4501, R.C.M. 1947; (3)En. Sec. 230, Ch. 368, L. 1969; Sec. 23-4506, R.C.M. 1947; R.C.M. 1947, 23-4501, 23-4506(3).

13-14-102. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 226, Ch. 368, L. 1969; R.C.M. 1947, 23-4502.

13-14-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 227, Ch. 368, L. 1969; R.C.M. 1947, 23-4503.

13-14-104. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 228, Ch. 368, L. 1969; R.C.M. 1947, 23-4504.

13-14-105 through 13-14-110 reserved.

13-14-111. Application of general laws. Except as otherwise provided in this chapter, candidates for nonpartisan offices, including judicial offices, must be nominated and elected according to the provisions of this title.

History: En. Sec. 139, Ch. 571, L. 1979; amd. Sec. 51, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-14-112. Declarations for nomination — fee — filing. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the individual seeks.

(4) Declarations must be filed:

(a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201; and

(b) within the applicable filing period provided in 13-10-201(6)(a) or (6)(b) for the office that the individual seeks.

History: En. Sec. 140, Ch. 571, L. 1979; amd. Sec. 34, Ch. 475, L. 2003; amd. Sec. 13, Ch. 586, L. 2005; amd. Sec. 9, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (3) substituted "office" for "position"; substituted (4)(b) concerning filing period for "Time of filing must be the same as provided in 13-10-201"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Declaration for nomination for primary election, 13-10-201.
Filing fees, 13-10-202.

13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) Petitions for nomination must be filed within the applicable filing period provided in 13-10-201(6)(a) or (6)(b).

(3) A candidate may not file for more than one public office.

History: En. Sec. 141, Ch. 571, L. 1979; amd. Sec. 35, Ch. 475, L. 2003; amd. Sec. 14, Ch. 586, L. 2005; amd. Sec. 1, Ch. 230, L. 2009; amd. Sec. 10, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 230 deleted former subsections (2) and (3) that read: "(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 292 in (2) substituted "filed within the applicable filing period provided in 13-10-201(6)(a) or (6)(b)" for "filed at the same time provided in 13-10-201 for other candidates and offices". Amendment effective October 1, 2009.

Cross-References

Election of urban transportation district board, 7-14-214.
Election of board of trustees of fire district, 7-33-2106.
Election of first board of trustees for hospital district, 7-34-2116.
Declaration of nomination, 13-10-201.

13-14-114. Register of candidates. On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

History: En. Sec. 142, Ch. 571, L. 1979; amd. Sec. 2, Ch. 99, L. 1987.

Cross-References

Primary elections and nominations — register of candidates, 13-10-205.

13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), the administrator shall give notice to the governing body that a primary election will not be held.

(3) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held.

History: (1), (2)En. Sec. 143, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 359, L. 1979; amd. Sec. 1, Ch. 123, L. 1985; amd. Sec. 13, Ch. 591, L. 1991; amd. Sec. 1, Ch. 135, L. 1995; amd. Sec. 46, Ch. 414, L. 2003.

Cross-References

Duties of officials when election not held, 13-1-304.
Arrangement of primary ballots, 13-10-209.

13-14-116. Counting and canvassing of nonpartisan ballots. Nonpartisan ballots must be counted and canvassed as provided for in chapter 15.

History: En. Sec. 144, Ch. 571, L. 1979; amd. Sec. 3, Ch. 391, L. 1989; amd. Sec. 47, Ch. 414, L. 2003.

Cross-References

Disposition of ballots, 13-1-303, 13-15-205.
Declaration of intent for write-in candidates, 13-10-211.
Public counting of votes required, 13-15-101.

13-14-117. Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(2), a primary election is not held, then all candidates who filed for an office are nominees for the office.

History: En. Sec. 145, Ch. 571, L. 1979; amd. Sec. 2, Ch. 135, L. 1995; amd. Sec. 48, Ch. 414, L. 2003.

13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary election a candidate is not able to run for the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office must be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) must be certified and must appear on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law.

History: En. Sec. 146, Ch. 571, L. 1979; amd. Sec. 33, Ch. 250, L. 1985; amd. Sec. 49, Ch. 414, L. 2003.

Part 2
Judicial Offices

Part Cross-References

The judiciary — constitutional provisions, Art. VII, Mont. Const.
Justices of the Peace, Art. VII, sec. 5, Mont. Const.
Selection of judicial officers, Art. VII, sec. 8, Mont. Const.
Supreme Court Justices — qualifications, Art. VII, sec. 9, Mont. Const.; 3-2-102.
District Court Judges — qualifications, Art. VII, sec. 9, Mont. Const.; 3-5-202.
Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.
Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.
Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.
Election of Justices of the Peace, 3-10-201.
Unlawful for political party to endorse judicial candidate, 13-35-231.

13-14-201. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 229, Ch. 368, L. 1969; R.C.M. 1947, 23-4505.

13-14-202. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 230, Ch. 368, L. 1969; R.C.M. 1947, 23-4506(1), (2).

13-14-203. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 231, Ch. 368, L. 1969; R.C.M. 1947, 23-4507.

13-14-204. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 232, Ch. 368, L. 1969; R.C.M. 1947, 23-4508.

13-14-205. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 233, Ch. 368, L. 1969; R.C.M. 1947, 23-4509.

13-14-206. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 234, Ch. 368, L. 1969; R.C.M. 1947, 23-4510.

13-14-207. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 1, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.1.

13-14-208. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 2, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.2.

13-14-209 and 13-14-210 reserved.

13-14-211. Judicial offices separate and independent offices for election purposes. (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district that has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county that has more than one justice of the peace is a separate and independent office for election purposes.

History: En. Sec. 147, Ch. 571, L. 1979; amd. Sec. 52, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancies on Supreme and District Court, Title 3, ch. 1, part 10.

Justice of the Peace as separate and independent office, 3-10-201.

13-14-212. Form of ballot on retention of certain incumbent judicial officers. (1) If the incumbent is the only candidate for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent must be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

(2) Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a "yes" or "no" vote.

History: En. Sec. 148, Ch. 571, L. 1979; amd. Sec. 50, Ch. 414, L. 2003; amd. Sec. 53, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Justices of the Peace elected in same manner as District Court Judge, 3-10-201.

13-14-213. Form of ballot on retention for other judicial offices. The election administrator or secretary of state shall use the form prescribed in 13-14-212 to place the name of an unopposed incumbent for a judicial office on the general election ballot if such office is subject to the provisions of Article VII, Section 8, of The Constitution of the State of Montana.

History: En. Sec. 149, Ch. 571, L. 1979.

CHAPTER 15
CANVASSING, RETURNS, AND CERTIFICATES

Part 1 — General Provisions

13-15-101. Votes to be publicly counted — return forms.
13-15-102. Defect in form of returns to be disregarded.
13-15-103. Renumbered 13-15-207.
13-15-104. Absentee ballot counting board.
13-15-105. Notices relating to absentee ballot counting board.
13-15-106. Counting of absentee ballot for deceased candidate.
13-15-107. Handling and counting provisional and challenged ballots.
13-15-108. Rejected ballots — handling provided by rule.
13-15-109 and 13-15-110 reserved.
13-15-111. Write-in elections — general election.
13-15-112. Appointment of counting boards.

Part 2 — Vote Count Procedures

13-15-201. Preparation for count.
13-15-202. Repealed.
13-15-203. Repealed.
13-15-204. Signing and certifying pollbook.
13-15-205. Items to be delivered to election administrator by election judges — disposition of other items.
13-15-206. Counting votes — uniformity — rulemaking — definitions.
13-15-207. Counting board procedures.
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Part 3 — Registrar's Duties

13-15-301. Disposition of items by election administrator.
13-15-302. Repealed.

Part 4 — County Canvass

13-15-401. Governing body as board of county canvassers.
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13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount.
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13-15-405. Declaration or certification of results.
13-15-406. Certificates to be issued by the election administrator.

Part 5 — State Canvass

13-15-501. Certification of canvass to state canvassers.
13-15-502. Composition and meeting of board of state canvassers.
13-15-503. Notification if returns not received from counties.
13-15-504. Governor to issue commissions.
13-15-505. Canvass to be public — procedure.
13-15-506. Report of the canvass.
13-15-507. Declaration, proclamation, and certification of results.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.
Criminal acts relating to canvassing, returns, and certificates, Title 13, ch. 35.
School elections, Title 20, ch. 20.

Part 1
General Provisions

13-15-101. Votes to be publicly counted — return forms. (1) Any official vote count must be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count.

History: En. Secs. 88, 171, Ch. 368, L. 1969; R.C.M. 1947, 23-3505, 23-4001; amd. Sec. 151, L. 1979; amd. Sec. 1, Ch. 100, L. 1987; amd. Sec. 13, Ch. 298, L. 1987; amd. Sec. 51, Ch. 414, L. 2003.

Cross-References

Disposition of return form, 13-15-205.

13-15-102. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969; R.C.M. 1947, 23-4019.

13-15-103. Renumbered 13-15-207. Code Commissioner, 2003.

13-15-104. Absentee ballot counting board. (1) The election administrator shall:

(a) give special instructions to any absentee ballot counting board appointed under 13-15-112 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The absentee ballot counting board shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-207 for the counting of the votes cast.

(3) An election judge or other individual having access to any results of early counting may not disclose the information while the polls are open and must remain sequestered until the closing of the polls.

(4) The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-207(4).

History: En. Sec. 5, Ch. 120, L. 1983; amd. Sec. 14, Ch. 298, L. 1987; amd. Sec. 53, Ch. 414, L. 2003.

Cross-References

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

13-15-105. Notices relating to absentee ballot counting board. (1) Whenever an absentee ballot counting board is appointed under 13-15-112, the election administrator shall:

(a) publish in the contracted newspaper of the county as provided in 18-7-411 a notice indicating the method that will be used for counting absentee ballots; and

(b) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time that the counting board for absentee ballots will meet on election day.

(2) If the count will begin while the polls are open, the notice required under subsection (1) must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and is required to take the oath provided in 13-15-207(4).

History: En. Sec. 6, Ch. 120, L. 1983; amd. Sec. 54, Ch. 414, L. 2003; amd. Sec. 16, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in (1) in introductory clause substituted "13-15-112" for "15-15-112". Amendment effective October 1, 2009.

Cross-References

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

13-15-106. Counting of absentee ballot for deceased candidate. (1) Except as provided in subsection (2) or (3), an absentee ballot voted for a candidate who dies after printing of the ballot but before the election must be counted for the deceased candidate.

(2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

(3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

History: En. Sec. 5, Ch. 85, L. 1997; amd. Sec. 2, Ch. 217, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 217 in (1) at beginning inserted exception clause, near middle after "voted" deleted "in a general election, as provided in subsection (2) or (3)," following "for a candidate" deleted "for governor or lieutenant governor", and at end after "counted" substituted "for the deceased candidate" for "as provided in subsection (2) or (3)"; and made minor changes in style. Amendment effective April 15, 2009.

13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the signature of the elector or the elector's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the elector's voter registration card or the agent's designation form.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (5).

(c) If the signatures do not match and the elector or the elector's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's identity or eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's identity or eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the elector's voter information is:

(a) verified before 5 p.m. on the day after the election; or

(b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election.

History: En. Sec. 36, Ch. 475, L. 2003; amd. Sec. 15, Ch. 286, L. 2005; amd. Sec. 15, Ch. 586, L. 2005; amd. Sec. 22, Ch. 273, L. 2007; amd. Sec. 17, Ch. 2, L. 2009; amd. Sec. 27, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 2 in (2)(b) at end after "subsection" substituted "(5)" for "(6)". Amendment effective October 1, 2009.

Chapter 297 in (1) near middle after "identification" inserted "or eligibility" and substituted "electronic means" for "electronic mail"; in (2)(a) near middle after "signature" inserted "or the elector's agent designated pursuant to 13-1-116" and at end inserted "or the agent's designation form"; in (2)(c) after "match" inserted "and the elector or the elector's agent fails to provide valid identification information by the deadline"; in (3) in first and second sentences after "elector's" inserted "identity or"; in (5) in introductory clause near beginning after "ballot" deleted "cast by an elector whose voter information is verified before 5 p.m. on the day after the election" and after "any other" substituted "provisional ballot if the elector's voter information is" for "ballot"; inserted (5)(a) and (5)(b) providing deadlines for verifying voter information; inserted (6) providing time for counting provisional ballots not resolved by end of election day; and made minor changes in style. Amendment effective October 1, 2009.

13-15-108. Rejected ballots — handling provided by rule. (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes must be handled and marked as provided under rules adopted by the secretary of state.

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be handled and marked as provided under rules adopted by the secretary of state.

(3) After being handled and marked as provided in this section, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state. After a package or container is sealed pursuant to this subsection (3), a package or container may not be opened without a court order.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(7) thru (9); amd. Sec. 131, Ch. 571, L. 1979; Sec. 13-13-236, MCA 1979; redes. 13-13-243 by Code Commissioner, 1979; amd. Sec. 4, Ch. 120, L. 1983; amd. Sec. 14, Ch. 286, L. 2005; amd. Sec. 2, Ch. 359, L. 2005; Sec. 13-13-243, MCA 2003; redes. 13-15-108 by Sec. 20, Ch. 286, L. 2005.

13-15-109 and 13-15-110 reserved.

13-15-111. Write-in elections — general election. (1) An individual elected by having the individual's name written in at the general election and receiving the largest number of votes counted as provided in 13-15-206(5) shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating the individual's acceptance of the position for which elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to comply with the requirements in subsection (1), the individual may not assume the position for which elected.

History: En. Sec. 4, Ch. 298, L. 1987; amd. Sec. 14, Ch. 591, L. 1991; amd. Sec. 37, Ch. 475, L. 2003; amd. Sec. 16, Ch. 586, L. 2005.

13-15-112. Appointment of counting boards. To count votes in any election under this title, when election judges are appointed under 13-4-101, each county's governing body shall designate three of the election judges to act as a counting board. The governing body may also designate three of the election judges to act as an absentee ballot counting board under 13-15-104.

History: En. Sec. 1, Ch. 414, L. 2003.

Part 2
Vote Count Procedures

13-15-201. Preparation for count. (1) Subject to 13-10-311, to prepare for a manual or automatic count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if the envelope contains more than one voted ballot for each election.

(3) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(4) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(5) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(6) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

History: En. Sec. 172, Ch. 368, L. 1969; R.C.M. 1947, 23-4002; amd. Sec. 152, Ch. 571, L. 1979; amd. Sec. 9, Ch. 242, L. 1997; amd. Sec. 55, Ch. 414, L. 2003; amd. Sec. 16, Ch. 286, L. 2005; amd. Sec. 23, Ch. 273, L. 2007; amd. Sec. 54, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-15-202. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Secs. 134, 173, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(3), 23-4003; amd. Sec. 153, Ch. 571, L. 1979; amd. Sec. 4, Ch. 391, L. 1989; amd. Sec. 3, Ch. 143, L. 1995; amd. Sec. 2, Ch. 129, L. 1999; amd. Sec. 3, Ch. 15, L. 2001.

13-15-203. Repealed. Sec. 19, Ch. 286, L. 2005.

History: En. Sec. 174, Ch. 368, L. 1969; R.C.M. 1947, 23-4004.

13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed, the pollbook must be signed and certified to by the election judges in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969; R.C.M. 1947, 23-4005; amd. Sec. 154, Ch. 571, L. 1979; amd. Sec. 55, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope must be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots must be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write the judge's name across all seals.

(5) The return form provided for in 13-15-101 must be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section must be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

History: En. Sec. 176, Ch. 368, L. 1969; R.C.M. 1947, 23-4006; amd. Sec. 155, Ch. 571, L. 1979; amd. Sec. 56, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(ii) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue.

History: En. Sec. 2, Ch. 414, L. 2003; amd. Sec. 17, Ch. 586, L. 2005; amd. Sec. 24, Ch. 273, L. 2007; amd. Sec. 1, Ch. 212, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 212 in (2)(a) near middle of second sentence inserted reference to subsection (5); inserted (5)(b) concerning requirement for marking of ballot voting area; and made minor changes in style. Amendment effective October 1, 2009.

13-15-207. Counting board procedures. (1) After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin prior to the close of the polls, or immediately upon the closure of the polls, in the manner prescribed in this section.

(2) (a) When a count is conducted after the polls have closed, the counting board shall meet at a place designated by the election administrator.

(b) The board must be sequestered until the count is complete.

(c) The board shall continue counting until the votes cast for all candidates and issues are counted.

(d) Votes must be counted as prescribed in 13-15-206.

(3) When votes are counted prior to the close of the polls:

(a) the election administrator shall make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls;

(b) the board must be sequestered in a room separate from the room where ballots are being cast;

(c) anyone observing the count must be sequestered with the board until the polls close;

(d) the ballots may be processed and counted as they are received;

(e) an election judge or other individual having access to early count results may not disclose that information to the public while the polls are open; and

(f) votes must be counted as prescribed in 13-15-206.

(4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board shall complete and sign the following affirmation: "I, _____, will not discuss the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation in subsection (4)(a).

History: En. Sec. 150, Ch. 571, L. 1979; amd. Sec. 52, Ch. 414, L. 2003; Sec. 13-15-103, MCA 2001; redes. 13-15-207 by Code Commissioner, 2003.

Cross-References

Appointment of Counting Board, 13-4-101.
Violation of duty as official misconduct, 13-35-204.

13-15-208. Determining total vote cast for all candidates for an office. When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969; R.C.M. 1947, 23-4113; Sec. 13-16-202, MCA 2001; redes. 13-15-208 by Code Commissioner, 2003.

13-15-209. Handling voting system error during count. (1) During a count in which votes are being counted by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly, votes must be counted manually in accordance with 13-15-206(2).

History: En. Sec. 1, Ch. 586, L. 2005; amd. Sec. 25, Ch. 273, L. 2007.

Part 3
Registrar's Duties

13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. Except as provided in subsection (2), the election administrator shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

(3) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

History: En. Sec. 177, Ch. 368, L. 1969; amd. Sec. 1, Ch. 100, L. 1974; R.C.M. 1947, 23-4007; amd. Sec. 156, Ch. 571, L. 1979; amd. Sec. 26, Ch. 273, L. 2007.

Cross-References

Election records open to public, 13-1-109.

13-15-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 178, Ch. 368, L. 1969; R.C.M. 1947, 23-4008.

Part 4
County Canvass

13-15-401. Governing body as board of county canvassers. (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual meeting place of the governing body within 3 to 14 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office.

History: **En. Sec. 179, Ch. 368, L. 1969; R.C.M. 1947, 23-4009; amd. Sec. 157, Ch. 571, L. 1979; amd. Sec. 1, Ch. 118, L. 1995; amd. Sec. 14, Ch. 7, L. 2001; amd. Sec. 38, Ch. 475, L. 2003; amd. Sec. 12, Ch. 89, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 89 in (1) substituted "3 to 14 days" for "3 to 7 days"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

County officers, 7-4-2203.

13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 to 7 days after an election, the election administrator shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

History: **En. Sec. 180, Ch. 368, L. 1969; R.C.M. 1947, 23-4010; amd. Sec. 158, Ch. 571, L. 1979; amd. Sec. 39, Ch. 475, L. 2003.**

13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount. (1) The canvass must be public. It must proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420.

History: **En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977; R.C.M. 1947, 23-4011; amd. Sec. 159, Ch. 571, L. 1979; amd. Sec. 1, Ch. 19, L. 1987; amd. Sec. 15, Ch. 591, L. 1991; amd. Sec. 57, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of the secretary's office a report of the canvass that lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report in the same place as the votes for other individuals for the same office but must be identified as write-in votes.

History: **En. Sec. 182, Ch. 368, L. 1969; R.C.M. 1947, 23-4012; amd. Sec. 160, Ch. 571, L. 1979; amd. Sec. 2, Ch. 70, L. 1983; amd. Sec. 58, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Election Administrator as secretary of Board of County Canvassers, 13-15-401.

13-15-405. Declaration or certification of results. (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503.

History: En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(1), 23-4103(5); amd. Sec. 161, Ch. 571, L. 1979; amd. Sec. 6, Ch. 317, L. 1991.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

County abandonment and consolidation elections, 7-2-2712.

Recount for tie vote, 13-16-203.

13-15-406. Certificates to be issued by the election administrator. The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

History: En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977; R.C.M. 1947, 23-4014; amd. Sec. 162, Ch. 571, L. 1979.

Part 5
State Canvass

13-15-501. Certification of canvass to state canvassers. (1) The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked “election returns”.

History: En. Sec. 185, Ch. 368, L. 1969; amd. Sec. 47, Ch. 365, L. 1977; R.C.M. 1947, 23-4015; amd. Sec. 163, Ch. 571, L. 1979.

13-15-502. Composition and meeting of board of state canvassers. Within 27 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of the secretary of state’s office.

History: En. Sec. 186, Ch. 368, L. 1969; amd. Sec. 21, Ch. 365, L. 1977; R.C.M. 1947, 23-4016; amd. Sec. 164, Ch. 571, L. 1979; amd. Sec. 59, Ch. 56, L. 2009; amd. Sec. 13, Ch. 89, L. 2009.

Compiler’s Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Chapter 89 at beginning of first sentence increased from 20 to 27 the number of days after an election within which the board of state canvassers must meet; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Board of County Canvassers allocated to Office of Secretary of State, 2-15-412.

13-15-503. Notification if returns not received from counties. If the returns from all counties have not been received 3 days before the meeting of the board of state canvassers, the secretary of state shall immediately advise the election administrator of each delinquent county.

History: En. Sec. 187, Ch. 368, L. 1969; R.C.M. 1947, 23-4017; amd. Sec. 165, Ch. 571, L. 1979.

13-15-504. Governor to issue commissions. Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to an additional term, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 368, L. 1969; R.C.M. 1947, 23-4018; amd. Sec. 169, Ch. 571, L. 1979; amd. Sec. 60, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Certificates issued by Governor in Congressional elections, 13-25-204.

13-15-505. Canvass to be public — procedure. (1) The canvass must be public. It must proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

History: En. Sec. 166, Ch. 571, L. 1979; amd. Sec. 61, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of the secretary of state's office a report of the canvass that lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report in the same place as votes of other individuals for the same office but must be identified as write-in votes.

History: En. Sec. 167, Ch. 571, L. 1979; amd. Sec. 62, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Secretary of State as secretary of Board of State Canvassers, 13-15-502.

13-15-507. Declaration, proclamation, and certification of results. The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

History: En. Sec. 168, Ch. 571, L. 1979.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by Governor, 2-15-401.

CHAPTER 16
RECOUNTS AND TIE VOTES

Part 1 — County Recount Board

13-16-101. County governing body as county recount board.

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13-16-201. Conditions under which recount to be conducted.
13-16-202. Renumbered 13-15-208.
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13-16-401. Renumbered 13-16-411.
13-16-402. Renumbered 13-16-412.
13-16-403. Renumbered 13-16-417.
13-16-404. Renumbered 13-16-418.
13-16-405. Renumbered 13-16-419.
13-16-406 through 13-16-410 reserved.
13-16-411. Individuals entitled to appear at recount.
13-16-412. Procedure for recounting paper ballots.
13-16-413. Repealed.
13-16-414. Repealed.
13-16-415. Recount totals.
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Part 5 — Tie Votes

13-16-501. Tie vote after recount.
13-16-502. Tie vote in election for United States congress.
13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator.
13-16-504. Tie vote in election for state executive officers.
13-16-505. Tie vote in election for county commissioner.
13-16-506. Tie vote in election for other county officers.
13-16-507. Tie vote in election for officers of nonspecified political subdivision.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.
Disposition of ballots and other election materials, 13-1-303.

Part 1
County Recount Board

13-16-101. County governing body as county recount board. (1) The county recount board must consist of three members.

(2) Three members of the governing body must be appointed by the presiding officer if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant position must be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, the member must be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

History: En. Sec. 203, Ch. 368, L. 1969; R.C.M. 1947, 23-4114; amd. Sec. 170, Ch. 571, L. 1979; amd. Sec. 63, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

County officers, 7-4-2203.

Expenses of recount, 13-16-205.

Part 2
Recounts in Close Elections

13-16-201. Conditions under which recount to be conducted. (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount must be conducted in all precincts in each affected county.

History: En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4103(1) thru (4); amd. Sec. 171, Ch. 571, L. 1979; amd. Sec. 2, Ch. 19, L. 1987; amd. Sec. 56, Ch. 414, L. 2003; amd. Sec. 64, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-16-202. Renumbered 13-15-208. Code Commissioner, 2003.

13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, the administrator or the secretary of state shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie must be resolved as provided by law.

History: En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(2), 23-4103(6); amd. Sec. 172, Ch. 571, L. 1979; amd. Sec. 49, Ch. 575, L. 1981; amd. Sec. 65, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Procedure in case of tie vote, Title 13, ch. 16, part 5.

13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator.

History: En. Sec. 204, Ch. 368, L. 1969; R.C.M. 1947, 23-4115; amd. Sec. 173, Ch. 571, L. 1979; amd. Sec. 3, Ch. 19, L. 1987; amd. Sec. 66, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-16-205. Expenses of recount. The expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969; R.C.M. 1947, 23-4122; amd. Sec. 50, Ch. 575, L. 1981.

13-16-206 through 13-16-210 reserved.

13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, the candidate may, within 5 days after the official canvass, file with the officer with whom the candidate's declaration or petition for nomination was filed a petition stating that the candidate believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which the candidate resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

History: En. Sec. 1, Ch. 395, L. 1979; amd. Sec. 67, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 3
Recounts Under Court Order

13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application must be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where the elector resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application must specify the grounds for a recount, and it must be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, the judge shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969; R.C.M. 1947, 23-4101; amd. Sec. 174, Ch. 571, L. 1979; amd. Sec. 68, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-16-302. Service of copy of application — hearing. The candidate found to be elected as a result of the original or first canvass must be served with a copy of the application for recount. The candidate must be given an opportunity to be heard and must be permitted to be present and to be represented at any recount.

History: En. Sec. 199, Ch. 368, L. 1969; R.C.M. 1947, 23-4110; amd. Sec. 69, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-206, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

History: En. Sec. 193, Ch. 368, L. 1969; R.C.M. 1947, 23-4104; amd. Sec. 175, Ch. 571, L. 1979; amd. Sec. 57, Ch. 414, L. 2003.

13-16-304. Ordering in another judge — jurisdiction. (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

History: En. Sec. 194, Ch. 368, L. 1969; R.C.M. 1947, 23-4105; amd. Sec. 176, Ch. 571, L. 1979.

13-16-305. Limitation of recount to certain counties or precincts. (1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

History: En. Secs. 191, 195, Ch. 368, L. 1969; R.C.M. 1947, 23-4102, 23-4106; amd. Sec. 177, Ch. 571, L. 1979.

13-16-306. Procedure when more than one application for recount. If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969; R.C.M. 1947, 23-4108.

13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant must be returned to the applicant.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; however, if the expense is less than the cost, the difference must be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant must be returned to the applicant.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; however, if the expense is less than the cost, the difference must be refunded to the applicant.

History: En. Sec. 196, Ch. 368, L. 1969; R.C.M. 1947, 23-4107; amd. Sec. 178, Ch. 571, L. 1979; amd. Sec. 70, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Recount Procedure

13-16-401. Renumbered 13-16-411. Code Commissioner, 1979.

13-16-402. Renumbered 13-16-412. Code Commissioner, 1979.

13-16-403. Renumbered 13-16-417. Code Commissioner, 1979.

13-16-404. Renumbered 13-16-418. Code Commissioner, 1979.

13-16-405. Renumbered 13-16-419. Code Commissioner, 1979.

13-16-406 through 13-16-410 reserved.

13-16-411. Individuals entitled to appear at recount. (1) Representatives of the news media may be present at the recount. The recount must be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and must have full opportunity to witness the entire recount process.

(3) If the recount is on a ballot issue, one qualified elector favoring each side of the question may be present.

History: En. Sec. 205, Ch. 368, L. 1969; R.C.M. 1947, 23-4116(1), (2), (4); amd. Sec. 179, Ch. 571, L. 1979; Sec. 13-16-401, MCA 1979; redes. 13-16-411 by Code Commissioner, 1979; amd. Sec. 58, Ch. 414, L. 2003.

13-16-412. Procedure for recounting paper ballots. To conduct a recount of paper ballots:

(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2); and

(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

History: En. Sec. 198, Ch. 368, L. 1969; R.C.M. 1947, 23-4109; amd. Sec. 180, Ch. 571, L. 1979; Sec. 13-16-402, MCA 1979; redes. 13-16-412 by Code Commissioner, 1979; amd. Sec. 59, Ch. 414, L. 2003; amd. Sec. 18, Ch. 586, L. 2005.

13-16-413. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Sec. 181, Ch. 571, L. 1979.

13-16-414. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 182, Ch. 571, L. 1979; amd. Sec. 51, Ch. 575, L. 1981; amd. Sec. 60, Ch. 414, L. 2003; amd. Sec. 19, Ch. 586, L. 2005.

13-16-415. Recount totals. After a recount is completed, tally sheets must be compared and the correctness of all reports of votes cast must be ascertained. The totals for each candidate or on each issue must be compiled and checked for accuracy.

History: En. Sec. 183, Ch. 571, L. 1979; amd. Sec. 71, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report that states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

History: En. Sec. 184, Ch. 571, L. 1979; amd. Sec. 72, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Election Administrator as secretary of Recount Board, 13-16-101.

13-16-417. Sealing ballots and voting systems. (1) When a recount of paper ballots that was conducted using a voting system is finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in rules adopted under 13-17-211.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody.

History: En. Sec. 200, Ch. 368, L. 1969; R.C.M. 1947, 23-4111; amd. Sec. 185, Ch. 571, L. 1979; Sec. 13-16-403, MCA 1979; redes. 13-16-417 by Code Commissioner, 1979; amd. Sec. 61, Ch. 414, L. 2003; amd. Sec. 73, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-16-418. Certification after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it must be attested to under seal by the election administrator.

(3) The certificate must set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate must adequately designate:

(a) each precinct recounted;

(b) the vote of each precinct according to the official canvass previously made;

(c) the nomination, position, or question involved; and

(d) the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate must be made in duplicate. One copy must be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action is needed.

(c) If there is a change in the result, a new certificate of election or nomination must be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate must be elected or nominated to the office.

History: Ap. p. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977; Sec. 23-4117, R.C.M. 1947; Ap. p. Sec. 201, Ch. 368, L. 1969; Sec. 23-4112, R.C.M. 1947; R.C.M. 1947, 23-4112, 43-4117; amd. Sec. 186, Ch. 571, L. 1979; Sec. 13-16-404, MCA 1979; redes. 13-16-418 by Code Commissioner, 1979; amd. Sec. 74, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question as corrected by the certificates and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, further action may not be taken.

(b) If there is a change in the results, a new certificate of election or nomination must be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969; R.C.M. 1947, 23-4118; Sec. 13-16-405, MCA 1979; redes. 13-16-419 by Code Commissioner, 1979; amd. Sec. 52, Ch. 575, L. 1981; amd. Sec. 75, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Board of State Canvassers, Title 13, ch. 15, part 5.
Issuance of certificate, 13-15-507.

13-16-420. Misplaced or missing ballots. If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed paper ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots.

History: En. Sec. 16, Ch. 591, L. 1991; amd. Sec. 62, Ch. 414, L. 2003.

Part 5
Tie Votes

13-16-501. Tie vote after recount. (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

History: En. Sec. 208, Ch. 368, L. 1969; R.C.M. 1947, 23-4119; amd. Sec. 187, Ch. 571, L. 1979.

13-16-502. Tie vote in election for United States congress. If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(1); amd. Sec. 188, Ch. 571, L. 1979.

Cross-References

Special election defined, 13-1-101.
Notice of special election, 13-1-108.

13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator. If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(2); amd. Sec. 189, Ch. 571, L. 1979.

13-16-504. Tie vote in election for state executive officers. If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(1), (4); amd. Sec. 190, Ch. 571, L. 1979.

Cross-References

Time of regular legislative session, 5-2-103.

13-16-505. Tie vote in election for county commissioner. If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(3); amd. Sec. 191, Ch. 571, L. 1979.

Cross-References

Vacancy on Board of County Commissioners, 7-4-2106.

13-16-506. Tie vote in election for other county officers. If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: **En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(2); amd. Sec. 192, Ch. 571, L. 1979.**

Cross-References

Vacancies of county offices, 7-4-2206.

13-16-507. Tie vote in election for officers of nonspecified political subdivision. If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: **En. Sec. 193, Ch. 571, L. 1979.**

Cross-References

Vacancies of offices of political subdivisions generally, Title 7, ch. 4, part 22.

CHAPTER 17
VOTING SYSTEMS

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13-17-301. Repealed.
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(Repealed)

Part 5 — Postelection Audit

13-17-501. Short title.
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13-17-503. Random-sample audit of vote-counting machines required — rulemaking authority.
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13-17-505. Selection process for random-sample audit.
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13-17-507. Discrepancies — substitution of results — examination of machines.
13-17-508. Reimbursement of county costs.
13-17-509. Vote-counting machine maintenance — examination.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to voting systems, 13-35-205, 13-35-206.

Use of voting systems in school elections, 20-20-421.

Part 1
General Provisions

13-17-101. Secretary of state to approve voting systems. (1) A voting system may not be used for any election in this state unless the system is approved by the secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine a voting system proposed for use to determine if it complies with the requirements of 13-17-103;

(b) within 30 days after examining the voting system, file a report of the examination in the secretary of state's office;

(c) include in the report the reasons for the voting system's approval or disapproval and the secretary of state's opinion about the economic and procedural impact that the voting system's use or nonuse may have on the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to each election administrator, including school election administrators for elections under Title 20, chapter 20, a copy of the report.

(3) Voting systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(1), (2); amd. Sec. 194, Ch. 571, L. 1979; amd. Sec. 63, Ch. 414, L. 2003.

Cross-References

Definition of voting system, 13-1-101.

13-17-102. Use of qualified technicians and advisers. (1) To the extent that funds are available, the secretary of state may compensate qualified technicians and advisers to assist in carrying out the secretary of state's duties required by 13-17-101.

(2) An entity submitting a voting system for examination shall pay to the secretary of state certain costs connected with the examination based on an agreement reached between the two parties.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(3), (4); amd. Sec. 195, Ch. 571, L. 1979; amd. Sec. 64, Ch. 414, L. 2003.

13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);

(g) is protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) uses a paper ballot that allows votes to be manually counted; and

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.

History: **En. Sec. 143, Ch. 368, L. 1969; R.C.M. 1947, 23-3802(1), (3); amd. Sec. 196, Ch. 571, L. 1979; amd. Sec. 33, Ch. 370, L. 1987; amd. Sec. 65, Ch. 414, L. 2003; amd. Sec. 1, Ch. 275, L. 2005; amd. Sec. 17, Ch. 286, L. 2005; amd. Sec. 27, Ch. 273, L. 2007; amd. Sec. 28, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(g) at beginning substituted "is protected" for "may be protected". Amendment effective October 1, 2009.

Cross-References

Secret ballot required, Art. IV, sec. 1, Mont. Const.

13-17-104. Providing voting systems — payment. (1) The county governing body may, as practicable, provide for the use of any voting system approved pursuant to 13-17-101.

(2) Funds for voting systems may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting systems or the question of which type of voting system to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

(4) A county governing body may, in the manner provided in rules adopted under 13-17-107, submit a voting system for consideration under 13-17-101.

History: **En. Sec. 144, Ch. 368, L. 1969; R.C.M. 1947, 23-3803; amd. Sec. 197, Ch. 571, L. 1979; amd. Sec. 66, Ch. 414, L. 2003.**

Cross-References

Referral of question to voters, 7-5-132.

13-17-105. Experimental use of voting systems. The governing body of a county may, without adoption or purchase of the voting system, provide for the experimental use in one or more precincts at an election of a voting system that has been approved by the secretary of state under 13-17-101. The voting system's use at the election is valid for all purposes as if the system had been formally adopted or purchased by the county.

History: **En. Sec. 158, Ch. 368, L. 1969; R.C.M. 1947, 23-3817; amd. Sec. 198, Ch. 571, L. 1979; amd. Sec. 67, Ch. 414, L. 2003.**

13-17-106. General application of election laws. All laws applicable to elections when voting is not done using a voting system and all penalties prescribed for violations of those laws apply to elections and precincts when voting systems are used if those laws are not in conflict with the provisions of this chapter.

History: **En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977; R.C.M. 1947, 23-3822; amd. Sec. 199, Ch. 571, L. 1979; amd. Sec. 68, Ch. 414, L. 2003.**

13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting systems for examination and additional requirements for approval of voting systems.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting system now approved for use in this state and for each type of system approved for use under the provisions of this chapter.

History: **En. Sec. 200, Ch. 571, L. 1979; amd. Sec. 69, Ch. 414, L. 2003.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-17-108. Punchcard voting systems prohibited. A punchcard voting system may not be used in an election after December 31, 2003.

History: **En. Sec. 1, Ch. 320, L. 2003.**

Part 2
Preparation for Use of Systems

13-17-201. Election administrator to instruct election judges. (1) Before each election in which a voting system is used, the election administrator shall instruct all election judges in the use of the system as provided in 13-4-203.

(2) A chief election judge may not serve in a precinct where a voting system is used unless the judge has received the required instruction, is fully qualified to perform duties in connection with the system, and has received a certificate to that effect from the election administrator.

History: **En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977; R.C.M. 1947, 23-3807; amd. Sec. 201, Ch. 571, L. 1979; amd. Sec. 70, Ch. 414, L. 2003.**

13-17-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 151, Ch. 368, L. 1969; R.C.M. 1947, 23-3810.

13-17-203. Publication of information concerning voting systems. (1) Not more than 10 or less than 3 days before an election at which a voting system will be used, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:

(a) a diagram showing the voting system and ballot arrangement (in newspaper only);

(b) a statement of the locations where voting systems are on public exhibition; and

(c) instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors.

History: En. Sec. 149, Ch. 368, L. 1969; R.C.M. 1947, 23-3808; amd. Sec. 202, Ch. 571, L. 1979; amd. Sec. 71, Ch. 414, L. 2003; amd. Sec. 29, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) in introductory clause near middle after "administrator shall" substituted "broadcast" for "publish" and after "2-3-107, or" inserted "publish"; inserted (2) authorizing election administrator to select method of notification; and made minor changes in style. Amendment effective October 1, 2009.

13-17-204. Voting systems to be exhibited. A voting system must be on exhibition in the office of the election administrator of any county where the voting system is used and may be exhibited at other locations. The election administrator shall demonstrate the voting system to any inquiring elector.

History: En. Sec. 150, Ch. 368, L. 1969; R.C.M. 1947, 23-3809; amd. Sec. 203, Ch. 571, L. 1979; amd. Sec. 72, Ch. 414, L. 2003.

13-17-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804(1), (7).

13-17-206. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804; amd. Sec. 204, Ch. 571, L. 1979; amd. Sec. 73, Ch. 414, L. 2003.

13-17-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 152, Ch. 368, L. 1969; R.C.M. 1947, 23-3811.

13-17-208 through 13-17-210 reserved.

13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance testing and certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

(d) how to operate and test the system during counts; and

(e) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417.

History: En. Sec. 3, Ch. 414, L. 2003; amd. Sec. 20, Ch. 586, L. 2005; amd. Sec. 28, Ch. 273, L. 2007.

13-17-212. Performance testing and certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of each type of voting system in the state has been randomly tested and certified at least once every calendar year.

(3) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211.

History: En. Sec. 4, Ch. 414, L. 2003; amd. Sec. 18, Ch. 286, L. 2005; amd. Sec. 29, Ch. 273, L. 2007; amd. Sec. 30, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (2) substituted "10% of each type of voting system" for "10% of all voting systems"; deleted former (3) that read: "(3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:

(a) upon delivery;
(b) no more than 30 days prior to the election; and
(c) on election day"; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Voting Procedure

13-17-301. Repealed. Sec. 91, Ch. 414, L. 2003.
History: **En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(1); amd. Sec. 205, Ch. 571, L. 1979.**

13-17-302. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(2).**

13-17-303. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 153, Ch. 368, L. 1969; amd. Sec. 43, Ch. 334, L. 1977; R.C.M. 1947, 23-3812.**

13-17-304. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(1).**

13-17-305. Repealed. Sec. 32, Ch. 273, L. 2007.
History: **En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(2); amd. Sec. 206, Ch. 571, L. 1979; amd. Sec. 1, Ch. 588, L. 1985; amd. Sec. 74, Ch. 414, L. 2003.**

13-17-306. Use of separate paper ballots for voting on certain candidates or issues. Subject to 13-12-202, whenever a voting system does not allow adequate space for all candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.
History: **En. Sec. 160, Ch. 368, L. 1969; R.C.M. 1947, 23-3819; amd. Sec. 207, Ch. 571, L. 1979; amd. Sec. 75, Ch. 414, L. 2003.**

13-17-307. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 146, Ch. 368, L. 1969; R.C.M. 1947, 23-3805.**

Part 4
Vote Count
(Repealed)

13-17-401. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 154, Ch. 368, L. 1969; R.C.M. 1947, 23-3813.**

13-17-402. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 155, Ch. 368, L. 1969; R.C.M. 1947, 23-3814.**

13-17-403. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 156, Ch. 368, L. 1969; R.C.M. 1947, 23-3815.**

13-17-404. Repealed. Sec. 407, Ch. 571, L. 1979.
History: **En. Sec. 157, Ch. 368, L. 1969; R.C.M. 1947, 23-3816.**

Part 5
Postelection Audit

Part Compiler's Comments
Effective Date: This part is effective October 1, 2009.

13-17-501. Short title. This part may be cited as the "Postelection Audit Act".
History: **En. Sec. 1, Ch. 89, L. 2009.**

13-17-502. Definitions. As used in this part, the following definitions apply:

(1) "Computer software expert" means a person who has obtained a bachelor of science degree in computer science with expertise in software engineering and who is not affiliated with an election software vendor.

(2) "County audit committee" means the committee that conducts a random-sample audit in a county.

(3) "Vote-counting machine" means an individual piece of equipment used to automatically tabulate votes.

History: **En. Sec. 2, Ch. 89, L. 2009.**

13-17-503. Random-sample audit of vote-counting machines required — rulemaking authority. (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

(a) appeared to have at least one overvote;

(b) appeared to be blank;

(c) was in a condition that prevented its processing by a vote-counting machine; or

(d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

(a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and

(b) an election for:

(i) one statewide office race, if any;

(ii) one federal office race;

(iii) one legislative office race; and

(iv) one statewide ballot issue if a statewide ballot issue was on the ballot.

(4) The audit may not include:

(a) a retention election for a judicial candidate; or

(b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

(a) the county does not use a vote-counting machine; or

(b) the county's unofficial final vote totals for any race or ballot issue involving more than one precinct show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

(a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

(b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part.

History: En. Sec. 3, Ch. 89, L. 2009.

13-17-504. County audit committee — membership — oath required. (1) Prior to each federal election, the county governing body shall appoint at least three individuals to serve on the county audit committee from a list of county employees and county residents who have offered to serve on the committee.

(2) The county audit committee may not include:

(a) a person who served as an election judge in the election;

(b) a person employed by the vendor who supplied the vote-counting machines subject to the audit; or

(c) a person who has performed maintenance on the vote-counting machines subject to the audit.

(3) Before beginning service, the audit committee members shall take and subscribe the official oath prescribed by the Montana constitution. The audit committee members may administer the oath to each other.

(4) The county election administrator shall serve as the secretary to the county audit committee.

History: En. Sec. 4, Ch. 89, L. 2009.

13-17-505. Selection process for random-sample audit. (1) No sooner than 7 days after the election and no later than 9 days after the election, the state board of canvassers, pursuant to 13-17-503 and as established by rule, shall randomly select:

(a) the races and ballot issue to be audited;

(b) the precincts to be audited in each county; and

(c) three additional precincts in each county that would be audited if a discrepancy in vote tallies occurs and results in the need to audit additional precincts pursuant to 13-17-507.

(2) The selection process must be open to the public.

(3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board of canvassers shall direct the secretary of state to:

(a) notify each county election administrator of the selections; and

(b) make a list of the selections available electronically.

History: **En. Sec. 5, Ch. 89, L. 2009.**

13-17-506. Conduct of random-sample audit. (1) The random-sample audit must be completed at least 1 day before the official canvass by the county board of canvassers.

(2) The county audit committee shall manually count the votes for the random-sample audit as follows:

(a) One member shall read the ballot while the remaining members shall each record on an official tally sheet the number of valid votes cast for each of the selected offices and the ballot issue.

(b) (i) After the vote is complete, the tally sheets of the members recording the votes must be compared.

(ii) If the tallies match, the county audit committee shall compare the manual count for the selected offices and the ballot issue to the vote-counting machine count for the selected offices and the ballot issue.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the tallies match.

(c) (i) If the manual count and the vote-counting machine totals match, the county audit committee shall certify the results to the county election administrator and the secretary of state.

(ii) If the manual count and the vote-counting machine totals do not match, the county audit committee shall follow the procedures established in 13-17-507.

(3) The audit process must be public.

History: **En. Sec. 6, Ch. 89, L. 2009.**

13-17-507. Discrepancies — substitution of results — examination of machines. (1) If a discrepancy exists between the vote-counting machine totals and the manual count totals, the random-sample audit results must serve as the definitive record for purposes of the canvass.

(2) If the random-sample audit results in a discrepancy of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error:

(a) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state; and

(b) at least three additional precincts within the county must be audited for the office or ballot issue in question. If the county has fewer than three additional precincts, all remaining precincts must be audited.

(3) If the audit of the additional precincts results in a discrepancy for those precincts of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error, the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state.

(4) The results of the random-sample audit must be public.

History: **En. Sec. 7, Ch. 89, L. 2009.**

13-17-508. Reimbursement of county costs. (1) Except as provided in subsection (2), the secretary of state shall reimburse each county for any costs incurred in implementing the provisions of this part.

(2) A vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and that fails an audit due to software or machine defects or vendor employee error shall

pay the costs incurred for the audit of vote-counting machines in the affected county. The provisions of this subsection must be reflected in the contract for the purchase of vote-counting machines.

History: En. Sec. 8, Ch. 89, L. 2009.

13-17-509. Vote-counting machine maintenance — examination. (1) Upgrades, patches, fixes, or alterations may not be applied to any vote-counting machine during the 30 days following a federal election.

(2) If a vote-counting machine fails an audit pursuant to 13-17-507, the vote-counting machine is subject to examination by a computer software expert in consultation with a voting system vendor.

History: En. Sec. 9, Ch. 89, L. 2009.

CHAPTER 18
ELECTRONIC VOTING SYSTEMS
(Repealed)

Part 1 — General Provisions
(Repealed)

Part 2 — Procedure
(Repealed)

Part 1
General Provisions
(Repealed)

13-18-101. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 164, Ch. 368, L. 1969; R.C.M. 1947, 23-3901.

13-18-102. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 165, Ch. 368, L. 1969; R.C.M. 1947, 23-3902.

13-18-103. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(1), (2).

13-18-104. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(4).

13-18-105. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 169, Ch. 368, L. 1969; R.C.M. 1947, 23-3906.

13-18-106. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 170, Ch. 368, L. 1969; R.C.M. 1947, 23-3907.

Part 2
Procedure
(Repealed)

13-18-201. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(part).

13-18-202. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(1).

13-18-203. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(2).

13-18-204. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(3).

13-18-205. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(4).

13-18-206. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(5).

13-18-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(3).

13-18-208. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(5).

13-18-209. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; R.C.M. 1947, 23-3905(1), (2).

13-18-210. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1), (3)En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; Sec. 23-3905, R.C.M. 1947; (2)En. Sec. 167, Ch. 368, L. 1969; Sec. 23-3904, R.C.M. 1947; R.C.M. 1947, 23-3904(part), 23-3905(3), (4).

CHAPTER 19
MAIL BALLOT ELECTIONS

Part 1 — General Provisions

13-19-101. Statement of purpose.
13-19-102. Definitions.
13-19-103. General election laws to apply.
13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — when county election administrator conducts.
13-19-105. Role of secretary of state.
13-19-106. General requirements for mail ballot election.

Part 2 — Preelection Procedure

13-19-201. How election initiated.
13-19-202. Initiation by governing body.
13-19-203. Initiation by election administrator.
13-19-204. Objection of political subdivision.
13-19-205. Written plan for conduct of election — amendments — approval procedures.
13-19-206. Distributing materials to electors — procedure.
13-19-207. When materials to be mailed.

Part 3 — Election Procedure

13-19-301. Voting mail ballots.
13-19-302. Proportional voting.
13-19-303. Voting by elector when absent from place of residence during conduct of election.
13-19-304. Voting by nonregistered electors.
13-19-305. Replacement ballots — procedures.
13-19-306. Returning marked ballots — when — where.
13-19-307. Places of deposit.
13-19-308. Disposition of ballots returned in person.
13-19-309. Disposition of ballots returned by mail.
13-19-310. Signature verification — procedures.
13-19-311. Valid ballots — requirements.
13-19-312. Counting procedure.
13-19-313. Notice to elector — opportunity to resolve questions.
13-19-314. Resolving ballots in question.

Part 1
General Provisions

13-19-101. Statement of purpose. The purpose of this chapter is to provide the option of and procedures for conducting certain specified elections as mail ballot elections. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

History: En. Sec. 1, Ch. 196, L. 1985; amd. Sec. 76, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ballot and to prevent that elector's ballot from being distinguished from the ballots of other electors.

History: En. Sec. 2, Ch. 196, L. 1985; amd. Sec. 1, Ch. 10, L. 1987; amd. Sec. 1, Ch. 146, L. 1997; amd. Sec. 31, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 inserted definition of ballot; deleted definition of mail ballot election that read: ""Mail ballot election" means any election conducted by mail pursuant to 13-19-104 and in compliance with the procedure specified in 13-19-106"; in definition of secrecy envelope near middle after "conceal the" substituted "elector's ballot" for "elector's vote"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-103. General election laws to apply. All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of this chapter or are not otherwise provided for by this chapter.

History: En. Sec. 5, Ch. 196, L. 1985.

13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — when county election administrator conducts. (1) Conducting elections by mail ballot is only one option available to local officials, and this chapter does not mandate that the procedure be used.

(2) Except as provided in subsection (3), any election may be conducted by mail ballot.

(3) The following elections may not be conducted by mail ballot:

(a) a regularly scheduled federal, state, or county election;

(b) a special federal or state election, unless authorized by the legislature; or

(c) a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.

(4) (a) Except as provided in subsection (4)(b), if more than one mail ballot election is being conducted in the political subdivision on the same day, the county election administrator shall conduct the elections.

(b) The requirement that a county election administrator shall conduct more than one mail ballot election on the same day does not apply to a mail ballot school bond election conducted by the trustees of any two or more school districts that have unified pursuant to 20-6-312 or that have created a joint board of trustees pursuant to 20-3-361.

History: En. Sec. 4, Ch. 196, L. 1985; amd. Sec. 2, Ch. 10, L. 1987; amd. Sec. 2, Ch. 146, L. 1997; amd. Sec. 1, Ch. 264, L. 2005.

13-19-105. Role of secretary of state. In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

(1) prescribe the form of materials to be used in the conduct of mail ballot elections;

(2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and

(3) adopt rules consistent with this chapter to:

(a) establish and maintain uniformity in the conduct of mail ballot elections; and

(b) establish procedures for the conduct of mail ballot elections that, when implemented by the election administrator:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of voted ballots is maintained.

History: En. Sec. 6, Ch. 196, L. 1985; amd. Sec. 32, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (3)(b) at end inserted "when implemented by the election administrator"; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15.

History: En. Sec. 3, Ch. 196, L. 1985; amd. Sec. 17, Ch. 591, L. 1991; amd. Sec. 1, Ch. 338, L. 1997; amd. Sec. 1, Ch. 546, L. 2001; amd. Sec. 76, Ch. 414, L. 2003; amd. Sec. 1, Ch. 443, L. 2003; amd. Sec. 33, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (5)(a) at end deleted "so that it is received before a specified time on election day"; inserted (5)(b) providing when ballot must be received; in (6) at beginning deleted "Once returned", substituted "voted ballot" for "submitted ballot", and at end inserted "in the election"; in (7) near beginning substituted "voted ballot" for "ballot" and near end substituted "must be deposited unopened" for "is then voted by depositing it unopened"; in (8) at beginning inserted exception clause and substituted "close of voting" for "close of polls"; and made minor changes in style. Amendment effective October 1, 2009.

Part 2
Preelection Procedure

13-19-201. How election initiated. A proposal to conduct an election under this chapter may be initiated by either the election administrator or the appropriate governing body as provided in 13-19-202 through 13-19-204.

History: En. Sec. 7, Ch. 196, L. 1985.

13-19-202. Initiation by governing body. (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of this chapter.

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in 13-19-204, the decision to conduct an election under the provisions of this chapter is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in 13-19-205.

History: **En. Sec. 8, Ch. 196, L. 1985.**

13-19-203. Initiation by election administrator. (1) Even if a request has not been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if the election administrator determines that a mail ballot election is the most economically and administratively feasible way of conducting the election in question.

(2) If the election administrator decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing the governing body of the decision to conduct the election by mail ballot, the reasons for the decision, and the right of the governing body to object under 13-19-204.

History: **En. Sec. 9, Ch. 196, L. 1985; amd. Sec. 77, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-19-204. Objection of political subdivision. (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If the resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted by mail under this chapter.

History: **En. Sec. 10, Ch. 196, L. 1985; amd. Sec. 34, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (2) near end after "conducted" inserted "by mail"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan for the conduct of the election and shall submit it to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election.

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot; and

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors.

(3) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(5) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law.

History: **En. Sec. 11, Ch. 196, L. 1985; amd. Sec. 35, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (1) near beginning after "written plan" deleted "including a timetable" and after "secretary of state" inserted "in a manner that ensures that it is received"; inserted (2) specifying what must be included in written plan; in (5) at end inserted "unless the election is canceled for any reason provided by law"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot for each type of election being held on the specified election day;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures;

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient postage for it to be delivered to the elector's address; and

(4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets.

History: En. Sec. 13, Ch. 196, L. 1985; amd. Sec. 18, Ch. 591, L. 1991; amd. Sec. 2, Ch. 338, L. 1997; amd. Sec. 36, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (2)(a) after "ballot" deleted "except that the election administrator may include separate ballots" and at end substituted "held on the specified election day" for "held concurrently"; in (2)(d) at end substituted "as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures" for "for voting and returning ballots"; inserted (4) providing for the return rather than forwarding of undelivered packets; and made minor changes in style. Amendment effective October 1, 2009.

13-19-207. When materials to be mailed. (1) Except as provided in subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator's office to:

(i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office.

History: En. Sec. 14, Ch. 196, L. 1985; amd. Sec. 37, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) at beginning inserted exception clause; in (2)(a) after "ballots" inserted "mailed to electors on the active list"; inserted (2)(b), (2)(c), and (2)(d) pertaining to the provision of ballots and voting by inactive electors or late registrants; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Election Procedure

13-19-301. Voting mail ballots. (1) Upon receipt of a mailed ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope in the return/verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit.

History: En. Sec. 16, Ch. 196, L. 1985; amd. Sec. 78, Ch. 56, L. 2009; amd. Sec. 38, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Chapter 297 in (1)(c) after "secrecy envelope" deleted "containing a single ballot"; in (2) at end substituted "is voted when the marked ballot is received at a place of deposit" for "is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box"; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

13-19-302. Proportional voting. The election administrator shall provide a method for proportional voting in the administrator's written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

History: En. Sec. 12, Ch. 196, L. 1985; amd. Sec. 79, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than the address that appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) (a) Ballots mailed to electors on the active list pursuant to this section must be mailed the same day that all other ballots are mailed, except that a ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is available.

(b) A ballot may be provided pursuant to this section until noon on the day before election day if, after the ballots are mailed to active electors:

(i) an inactive elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual registers under the late registration option provided for in 13-2-304.

History: En. Sec. 15, Ch. 196, L. 1985; amd. Sec. 39, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (2)(a) near beginning after "electors" inserted "on the active list" and at end inserted exception clause; inserted (2)(b) allowing provision of ballots to electors reactivating registration and late registrants; and made minor changes in style. Amendment effective October 1, 2009.

13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, the individual may vote by appearing in person at the election administrator's office or by providing materials by mail, facsimile, or electronic means and demonstrating that the individual possesses the qualifications required for voting.

(2) An individual complying with subsection (1) before official ballots are available may provide a card to the election administrator containing the signature of the individual or the individual's agent designated pursuant to 13-1-116 and the address to which the ballot is to be mailed. The signature provided must be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

History: En. Sec. 23, Ch. 196, L. 1985; amd. Sec. 80, Ch. 56, L. 2009; amd. Sec. 40, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 297 in (1) near middle after "office" inserted "or by providing materials by mail, facsimile, or electronic means"; in (2) near middle after "signature" inserted "of the individual or the individual's agent designated pursuant to 13-1-116"; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

13-19-305. Replacement ballots — procedures. (1) An elector may obtain a replacement ballot as provided in this section if the original ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking or receiving a replacement ballot shall sign a sworn statement stating that the original ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before another ballot may be issued.

(4) The election administrator shall designate the election administrator's office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If the election administrator later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, the election administrator shall immediately notify the county attorney and the secretary of state of each instance.

History: En. Sec. 17, Ch. 196, L. 1985; amd. Sec. 81, Ch. 56, L. 2009; amd. Sec. 41, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 297 in (2) near beginning after "seeking" inserted "or receiving"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day.

History: En. Sec. 18, Ch. 196, L. 1985; amd. Sec. 19, Ch. 591, L. 1991; amd. Sec. 82, Ch. 56, L. 2009; amd. Sec. 42, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 297 in (1) in introductory clause substituted "an elector or the elector's agent or designee" for "an elector or his designee"; in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

13-19-307. Places of deposit. (1) (a) The election administrator shall designate the election administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector or the elector's agent or designee.

(b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator shall designate at least one accessible place of deposit.

(2) Prior to election day, ballots may be returned to any designated place of deposit during the days and times set by the election administrator and within the regular business hours of the location.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any designated location functions as a place of deposit only on election day.

(5) Each place of deposit must be staffed by at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102.

(6) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

History: En. Sec. 19, Ch. 196, L. 1985; amd. Sec. 83, Ch. 56, L. 2009; amd. Sec. 43, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 297 in (1)(a) at end inserted "or the elector's agent or designee"; inserted (1)(b) requiring election administrator to designate an accessible place of deposit; in (2) at end substituted "deposit during the days and times set by the election administrator and within the regular business hours of the location" for "deposit only during regular business hours"; inserted (5) establishing staffing requirements for places of deposit; and made minor changes in style. Amendment effective October 1, 2009.

13-19-308. Disposition of ballots returned in person. Ballots returned in person by the elector or the elector's agent or designee must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector, agent, or designee is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot as provided in 13-19-314; and

(c) deposit the unopened secrecy envelope containing the voted ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election officials on location shall:

(a) keep a log of the names of all electors for whom the officials receive ballots;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all voted ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots handled in the same manner provided for ballots returned by mail.

History: En. Sec. 20, Ch. 196, L. 1985; amd. Sec. 20, Ch. 591, L. 1991; amd. Sec. 84, Ch. 56, L. 2009; amd. Sec. 44, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Chapter 297 in introductory clause inserted "or the elector's agent or designee"; in (1) in introductory clause after "elector" inserted "agent, or designee"; in (1)(b) at end inserted "as provided in 13-19-314"; in (1)(c) substituted "voted ballot" for "ballot"; in (2)(a) substituted "all electors for whom the officials receive ballots" for "all electors from whom he receives ballots and the names of the people who deliver the ballots"; in (2)(c) near beginning substituted "voted ballots" for "ballots"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-19-314.

History: En. Sec. 21, Ch. 196, L. 1985; amd. Sec. 77, Ch. 414, L. 2003.

13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or agent designation form or on the signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, agent designation form, or signature card, the election administrator shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, agent designation form, or signature card, the election administrator shall:

(a) designate the ballot as a provisional ballot; and

(b) give notice to the elector as provided in 13-19-313.

History: En. Sec. 22, Ch. 196, L. 1985; amd. Sec. 85, Ch. 56, L. 2009; amd. Sec. 45, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Chapter 297 in (1) near end after "card or" inserted "agent designation form or on the"; in (2) after "card" inserted "agent designation form, or signature card"; in (3) in introductory clause at end substituted "registration card, agent designation form, or signature card, the election administrator shall" for "registration card, he may not validate the ballot but instead shall"; inserted (3)(a) requiring the ballot be designated a provisional ballot; deleted former (3)(b) that read: "(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a voted ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day, except as provided in 13-21-206.

(3) If a voted ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(4) A ballot is invalid if:

(a) any identifying marks are placed on the ballot by the elector; or

(b) more than one ballot is enclosed in a single return/verification or secrecy envelope unless:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) (A) the return/verification envelope contains ballots from the same household;

(B) each ballot is in its own secrecy envelope; and

(C) the return/verification envelope contains a valid signature for each elector who has returned a ballot.

History: En. Sec. 24, Ch. 196, L. 1985; amd. Sec. 21, Ch. 591, L. 1991; amd. Sec. 3, Ch. 338, L. 1997; amd. Sec. 46, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (2) in introductory clause substituted "voted ballot" for "ballot"; in (2)(c) at end inserted exception clause; inserted (3) requiring ballot to be placed in secrecy envelope; inserted (4)(b)(ii) providing exception from invalidating ballot when more than one ballot is in return/verification envelope; deleted former (4) that read: "(4) Failure of an elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address in conjunction with a mailed ballot, as provided in 13-19-106, invalidates an otherwise valid mailed ballot"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-312. Counting procedure. (1) Except as provided in subsection (2), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the voted ballot; and

(c) proceed to count the votes as provided in Title 13, chapter 15.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if the election administrator complies with the procedures described in 13-15-207(3).

History: En. Sec. 27, Ch. 196, L. 1985; amd. Sec. 22, Ch. 591, L. 1991; amd. Sec. 78, Ch. 414, L. 2003; amd. Sec. 47, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(b) substituted "voted ballot" for "ballot"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator:

(a) is unable to verify the elector's or agent's signature under 13-19-310;

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311; or

(c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail or in person, verify the elector's or agent's signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form;

(b) by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at the election administrator's office.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a mail ballot is returned as undeliverable, the election administrator shall investigate the reason for the return and mail a confirmation notice. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.

(b) If the confirmation notice is returned to the election administrator, the elector must be placed on the inactive list provided for in 13-2-220 until the elector becomes a qualified elector.

History: En. Sec. 25, Ch. 196, L. 1985; amd. Sec. 10, Ch. 246, L. 1997; amd. Sec. 40, Ch. 475, L. 2003; amd. Sec. 48, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) in introductory clause after "elector" substituted "by the most expedient method available" for "either by telephone or by first-class mail"; in (1)(a) after "elector's" inserted "or agent's"; inserted (1)(c) providing for notice to elector of failure to attest to or correct address; in (2) in introductory clause substituted "prior to 8 p.m. on election day, the elector may" for "the elector may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake"; in (2)(a) at beginning substituted "by mail or in person, verify the elector's or agent's signature" for "verify the elector's signature" and at end inserted "or by providing a new agent designation form"; in (2)(b) at beginning inserted "by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or"; in (2)(c) at end substituted "vote it at the election administrator's office" for "vote it at that time"; inserted (3) providing that failure to provide information results in ballot being treated as provisional; in (4)(a) after "returned" inserted "as undeliverable"; in (4)(b) after "list" inserted "provided for in 13-2-220"; and made minor changes in style. Amendment effective October 1, 2009.

13-19-314. Resolving ballots in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to determine without doubt whether a voted ballot is valid or invalid, the election administrator shall give notice to the elector as provided in 13-19-313.

(2) If, subsequent to following the procedure in 13-19-313, the election administrator is still unable to determine without doubt whether the voted ballot is valid or invalid, the ballot must be handled as a provisional ballot pursuant to 13-15-107.

History: En. Sec. 26, Ch. 196, L. 1985; amd. Sec. 79, Ch. 414, L. 2003; amd. Sec. 49, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) and (2) substituted "voted ballot" for "ballot"; in (2) at end substituted "the ballot must be handled as a provisional ballot pursuant to 13-15-107" for "the election administrator shall present the issue for a determination to the counting board appointed pursuant to 13-15-112"; deleted former (3) and (4) that read: "(3) If a majority of the counting board is unable to agree on whether the ballot is valid or invalid, it may not count the ballot in question, and the election administrator shall present the ballot to the board of canvassers for a determination of the issue.

(4) If a majority of the board of canvassers is unable to agree that the ballot is valid, the ballot is invalid and may not be counted"; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 20
RESERVED

CHAPTER 21

MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT

Part 1 — General Provisions

13-21-101. Short title.
13-21-102. Definitions.
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13-21-213. Report on absentee ballots.

Part 1

General Provisions

13-21-101. Short title. This chapter may be cited as the "Montana Absent Uniformed Services and Overseas Elector Voting Act".

History: En. Sec. 1, Ch. 557, L. 2003.

13-21-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Absent uniformed services elector" means an absent uniformed services voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) a member of the uniformed services on active duty who, by reason of the active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) a spouse or dependent of a member referred to in subsection (1)(a) or (1)(b) who, by reason of the member's active duty, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(2) "Federal post card application" means the federal post card application prescribed pursuant to 42 U.S.C. 1973ff.

(3) "Federal write-in absentee ballot" means the federal write-in absentee ballot prescribed pursuant to 42 U.S.C. 1973ff-2.

(4) "Member of the merchant marine" means, pursuant to 42 U.S.C. 1973ff-6, a person, other than a member of the uniformed services or an individual employed, enrolled, or maintained on the Great Lakes of the inland waterways, who is:

(a) employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of a foreign-flag registry under charter to or control of the United States; or

(b) enrolled as an officer or crew member with the United States for employment or for training for employment or who is maintained by the United States for emergency relief service on a vessel described in subsection (4)(a).

(5) "Overseas elector" means an overseas voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) an absent uniformed services elector who by reason of active duty or service is absent from the United States on the date of the election involved;

(b) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) a person who resides outside the United States and would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "Regular absentee ballot" means the absentee ballot prepared by the election administrator for any election.

(7) "Uniformed services" means, pursuant to 42 U.S.C. 1973ff-6, the U.S. army, navy, air force, marine corps, and coast guard, the commissioned corps of the U.S. public health service, and the commissioned corps of the U.S. national oceanic and atmospheric administration.

(8) "United States", as used in the context of describing a geographical area, means, pursuant to 42 U.S.C. 1973ff-6, the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(9) "United States elector" means an absent uniformed services elector or an overseas elector.

(10) "Voter registration form" means the form approved by the secretary of state that an elector may use to register to vote in Montana.

History: **En. Sec. 2, Ch. 557, L. 2003.**

13-21-103. Secretary of state designated as single point of contact — rulemaking. (1) The office of the secretary of state is the state's single point of contact responsible for providing information regarding voter registration and absentee ballot procedures to be used by a United States elector.

(2) The secretary of state shall, with the assistance of local election administrators, compile, make available to the general public, or forward to appropriate federal authorities any reports or information required to be compiled, made available, or forwarded pursuant to federal law.

(3) The secretary of state may adopt rules to implement the provisions of this chapter.

History: **En. Sec. 3, Ch. 557, L. 2003; amd. Sec. 1, Ch. 157, L. 2007.**

13-21-104. Adoption of rules on electronic registration and voting — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-21-207. The rules are binding upon election administrators.

(2) The rules must provide that:

(a) there are uniform statewide standards concerning electronic registration and voting;

(b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a United States elector as soon as the ballots are available pursuant to 13-13-205;

(c) a United States elector may, subject to 13-2-304, register and vote up to the time that the polls close on election day;

(d) a United States elector is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote; and

(e) a ballot cast by a United States elector and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(e) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter.

History: **En. Sec. 2(2), (3), Ch. 111, L. 1991; amd. Sec. 49, Ch. 42, L. 1997; amd. Sec. 3, Ch. 80, L. 1999; amd. Sec. 22, Ch. 557, L. 2003; Sec. 13-13-278, MCA 2001; redes. 13-21-104 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 1, Ch. 278, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 278 in (1) deleted third and fourth sentences that read: "The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of this chapter"; inserted (2) regarding rules on electronic registration and voting; and made minor changes in style. Amendment effective April 17, 2009.

Report by Secretary of State: Section 5, Ch. 278, L. 2009, provided: "(1) The secretary of state and county election administrators shall work with staff of the department of military affairs and with other interested parties to identify, investigate, and resolve problems with and challenges to implementing efficient, secure, and timely registration and voting for absent uniformed services electors and overseas electors as required by 13-21-104, 13-21-201, 13-21-207 and 13-21-210.

(2) (a) During the 2009-10 interim, the secretary of state shall, whenever requested, report to the state administration and veterans' affairs interim committee on the progress of the investigation.

(b) The secretary of state shall complete the investigation prior to September 1, 2010. Completion of the investigation includes providing a final report of the secretary of state's and election administrators' findings, conclusions, and specific recommendations to the governor and to the legislature as provided in 5-11-210.

(c) If the secretary of state recommends statutory changes or anticipates requesting an appropriation from the 62nd legislature as a result of the investigation, the secretary of state shall, at a time requested by the state administration and veterans' affairs interim committee, present to the committee the concept for the legislation, appropriation, or both.

(3) The state administration and veterans' affairs interim committee shall consider the proposal for legislation as required in 5-5-215."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Close of registration, 13-2-301.

Part 2
Absentee Voting

13-21-201. Registration of United States electors — simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector's county of residence by properly completing, signing, and returning:

(a) the voter registration form;

(b) the federal post card application; or

(c) the federal write-in absentee ballot as provided in 13-21-205.

(2) A registration application under subsection (1)(a) or (1)(b) must be received by the election administrator by the time specified in 13-2-304 for late registration.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210.

History: (1)En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; Sec. 23-3006, R.C.M. 1947; (2)En. Sec. 137, Ch. 368, L. 1969; Sec. 23-3719, R.C.M. 1947; R.C.M. 1947, 23-3006(7), 23-3719(2); amd. Sec. 31, Ch. 571, L. 1979; amd. Sec. 2, Ch. 396, L. 1985; amd. Sec. 1, Ch. 302, L. 1991; amd. Sec. 1, Ch. 164, L. 1999; amd. Sec. 10, Ch. 557, L. 2003; Sec. 13-2-212, MCA 2001; redes. 13-21-201 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 2, Ch. 157, L. 2007; amd. Sec. 2, Ch. 278, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 278 in (2) near middle substituted "by the time specified in 13-2-304 for late registration" for "not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election". Amendment effective April 17, 2009.

Report by Secretary of State: Section 5, Ch. 278, L. 2009, provided: "(1) The secretary of state and county election administrators shall work with staff of the department of military affairs and with other interested parties to identify, investigate, and resolve problems with and challenges to implementing efficient, secure, and timely registration and voting for absent uniformed services electors and overseas electors as required by 13-21-104, 13-21-201, 13-21-207 and 13-21-210.

(2) (a) During the 2009-10 interim, the secretary of state shall, whenever requested, report to the state administration and veterans' affairs interim committee on the progress of the investigation.

(b) The secretary of state shall complete the investigation prior to September 1, 2010. Completion of the investigation includes providing a final report of the secretary of state's and election administrators' findings, conclusions, and specific recommendations to the governor and to the legislature as provided in 5-11-210.

(c) If the secretary of state recommends statutory changes or anticipates requesting an appropriation from the 62nd legislature as a result of the investigation, the secretary of state shall, at a time requested by the state administration and veterans' affairs interim committee, present to the committee the concept for the legislation, appropriation, or both.

(3) The state administration and veterans' affairs interim committee shall consider the proposal for legislation as required in 5-5-215."

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-21-202. Classification of applications for regular absentee ballots — notification of elector. (1) Upon receipt by the election administrator of an application by a

United States elector for a regular absentee ballot pursuant to 13-13-212 or 13-21-210, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the federal post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered. This information is sufficient to meet any identification requirements provided by law for an elector.

(c) send to the applicant by the fastest mail service available, which may include facsimile transmission or electronic mail, a notice that the elector has been registered and informing the elector that a regular absentee ballot is enclosed or that the elector will be mailed a regular absentee ballot for that election or for the next election in which the elector is entitled to vote under subsection (1) or, if the application is rejected, a notice that the application has been rejected and the reasons for the rejection.

(2) The election administrator may use photocopies of the federal post card application to complete all necessary records.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971; R.C.M. 1947, 23-3721; amd. Sec. 33, Ch. 571, L. 1979; amd. Sec. 3, Ch. 396, L. 1985; amd. Sec. 11, Ch. 557, L. 2003; Sec. 13-2-214, MCA 2001; redes. 13-21-202 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 3, Ch. 157, L. 2007.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-21-203. Registration of United States electors after return. (1) A United States elector who has returned to the elector's residence too late to register at the time and place required for regular registration may register:

(a) under the late registration provisions of 13-2-304; or

(b) up to noon on the day before the election for the purpose of voting at the next election after the date of the elector's return.

(2) The elector shall execute a sworn affidavit qualifying the elector under this section to be filed in the office of the elector's registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which the elector is entitled to vote. This certificate must be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971; R.C.M. 1947, 23-3724; amd. Sec. 12, Ch. 557, L. 2003; Sec. 13-2-215, MCA 2001; redes. 13-21-203 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 50, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 297 in (1) before "registration" inserted "regular"; inserted (1)(a) providing for registration under late registration provisions; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-21-204. Repealed. Sec. 7, Ch. 157, L. 2007.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 3, Ch. 302, L. 1991; amd. Sec. 3, Ch. 164, L. 1999; amd. Sec. 18, Ch. 557, L. 2003; Sec. 13-13-271, MCA 2001; redes. 13-21-204 by Sec. 24, Ch. 557, L. 2003.

13-21-205. Federal write-in absentee ballot. (1) A United States elector may register, if not already registered, and vote in any election by completing, signing, and returning a federal write-in absentee ballot and meeting the requirements in 13-21-206.

(2) (a) A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party.

(b) (i) Except as provided in subsection (2)(b)(ii), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.

(ii) If the elector is voting in a primary election, the elector shall identify the elector's political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector's identified party is void and may not be counted.

(3) A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(4) If the elector receives the regular absentee ballot after the elector has voted and mailed a federal write-in absentee ballot, the elector may vote and return the regular absentee ballot.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 19, Ch. 557, L. 2003; Sec. 13-13-272, MCA 2001; redes. 13-21-205 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 4, Ch. 157, L. 2007.

13-21-206. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

(a) the elector's voter registration and identification information is sufficient to determine that the elector is eligible to vote in the election;

(b) the ballot is not received before regular absentee ballots have been printed pursuant to 13-13-205;

(c) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

(d) the ballot is sent by 8 p.m. on election day and is received by 3 p.m. on the Monday following the election.

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 4, Ch. 164, L. 1999; amd. Sec. 20, Ch. 557, L. 2003; Sec. 13-13-273, MCA 2001; redes. 13-21-206 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 21, Ch. 586, L. 2005; amd. Sec. 5, Ch. 157, L. 2007.

13-21-207. *(Temporary)* **Registration and voting by facsimile and internet authorized.** Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for a United States elector, if internet facilities that provide for secrecy are available, in place of the public mails:

(1) register an individual to vote;
(2) give notice of registration;
(3) receive requests for an absentee ballot;
(4) transmit absentee ballots to electors; and
(5) receive absentee ballots from electors.

13-21-207. *(Effective January 1, 2012)* **Registration and voting electronically — definition.** (1) Notwithstanding other provisions of this title, each election administrator shall, in any primary election, general election, and special election, allow a United States elector to take the following actions electronically in place of the public mails:

(a) register an individual to vote;
(b) give notice of registration;
(c) receive requests for an absentee ballot;
(d) transmit absentee ballots to electors; and
(e) receive absentee ballots from electors.

(2) A ballot cast by a United States elector pursuant to this section may be counted only if it is transmitted by the elector to the election administrator before the close of polls on election day and is received by the election administrator before 5 p.m. on the day after the election. Ballots received pursuant to this section must be counted at the same time as provisional ballots are counted.

(3) For purposes of this section, "electronically" means by facsimile transmission or electronic mail. The term includes internet-based voting if an internet-based voting system approved by the secretary of state is available to the election administrator.

History: En. Sec. 2(1), Ch. 111, L. 1991; amd. Sec. 2, Ch. 80, L. 1999; amd. Sec. 21, Ch. 557, L. 2003; Sec. 13-13-277, MCA 2001; redes. 13-21-207 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 3, Ch. 278, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 278 in (1) near middle after "administrator" substituted "shall" for "may", after "special election" inserted "allow a United States elector to", after "take the following" substituted "actions electronically" for "acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for a United States elector, if internet facilities that provide for secrecy are available"; inserted (2) concerning deadline for electronic ballots to be transmitted; inserted (3) defining electronically; and made minor changes in style. Amendment effective January 1, 2012.

Report by Secretary of State: Section 5, Ch. 278, L. 2009, provided: "(1) The secretary of state and county election administrators shall work with staff of the department of military affairs and with other interested parties to identify, investigate, and resolve problems with and challenges to implementing efficient, secure, and timely registration and voting for absent uniformed services electors and overseas electors as required by 13-21-104, 13-21-201, 13-21-207 and 13-21-210.

(2) (a) During the 2009-10 interim, the secretary of state shall, whenever requested, report to the state administration and veterans' affairs interim committee on the progress of the investigation.

(b) The secretary of state shall complete the investigation prior to September 1, 2010. Completion of the investigation includes providing a final report of the secretary of state's and election administrators' findings, conclusions, and specific recommendations to the governor and to the legislature as provided in 5-11-210.

(c) If the secretary of state recommends statutory changes or anticipates requesting an appropriation from the 62nd legislature as a result of the investigation, the secretary of state shall, at a time requested by the state administration and veterans' affairs interim committee, present to the committee the concept for the legislation, appropriation, or both.

(3) The state administration and veterans' affairs interim committee shall consider the proposal for legislation as required in 5-5-215."

13-21-208 and 13-21-209 reserved.

13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the permanent absentee ballot list. An elector who is removed from the permanent absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed.

History: En. Sec. 4, Ch. 557, L. 2003; amd. Sec. 6, Ch. 157, L. 2007; amd. Sec. 2, Ch. 221, L. 2007; amd. Sec. 4, Ch. 278, L. 2009; amd. Sec. 51, Ch. 297, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 278 in (2) at end substituted "by the time specified in 13-2-304 for late registration" for "not less than 30 days before the date of an election. An application for a regular absentee ballot that is received less than 30 days before the date of an election must be processed for the next election". Amendment effective April 17, 2009.

Chapter 297 in (3) after "federal general elections" inserted language relating to absentee ballot requests; inserted (4) pertaining to elector's removal from permanent absentee ballot list; and made minor changes in style. Amendment effective October 1, 2009.

Report by Secretary of State: Section 5, Ch. 278, L. 2009, provided: "(1) The secretary of state and county election administrators shall work with staff of the department of military affairs and with other interested parties to identify, investigate, and resolve problems with and challenges to implementing efficient, secure, and timely registration and voting for absent uniformed services electors and overseas electors as required by 13-21-104, 13-21-201, 13-21-207 and 13-21-210.

(2) (a) During the 2009-10 interim, the secretary of state shall, whenever requested, report to the state administration and veterans' affairs interim committee on the progress of the investigation.

(b) The secretary of state shall complete the investigation prior to September 1, 2010. Completion of the investigation includes providing a final report of the secretary of state's and election administrators' findings, conclusions, and specific recommendations to the governor and to the legislature as provided in 5-11-210.

(c) If the secretary of state recommends statutory changes or anticipates requesting an appropriation from the 62nd legislature as a result of the investigation, the secretary of state shall, at a time requested by the state administration and veterans' affairs interim committee, present to the committee the concept for the legislation, appropriation, or both.

(3) The state administration and veterans' affairs interim committee shall consider the proposal for legislation as required in 5-5-215."

13-21-211. Replacement absentee ballots. A United States elector who has made a request for an absentee ballot pursuant to 13-21-210 may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made to the election administrator by telephone, letter, facsimile transmission, or electronic mail.

History: En. Sec. 5, Ch. 557, L. 2003.

13-21-212. Mailing ballots to United States elector. Ballots mailed to a United States elector must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the elector and the return envelope for the ballot must have printed across its face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

History: En. Sec. 6, Ch. 557, L. 2003.

13-21-213. Report on absentee ballots. (1) Within 60 days after the date of each regularly scheduled federal general election, each county election administrator shall report to the secretary of state:

(a) the number of regular absentee ballots transmitted by the election administrator to United States electors for the election; and

(b) the number of regular absentee ballots cast and returned to the election administrator for the election from United States electors.

(2) The secretary of state may prescribe a standardized format for the report.

(3) Within 90 days after the date of each regularly scheduled federal general election, the secretary of state shall report to the federal election assistance commission, established pursuant to the Help America Vote Act of 2002, Public Law 107-252, or its successor a statewide report containing the information provided under subsection (1). The report must be made in the format prescribed by the federal election assistance commission.

History: En. Sec. 7, Ch. 557, L. 2003.

CHAPTER 22
YOUTH VOTING ACT

Part 1 — General Provisions

13-22-101. Short title.
13-22-102. Purpose and intent.
13-22-103. Youth voting program established — program coordination — school participation.
13-22-104. Program development.
13-22-105. Responsibilities of participating schools.
13-22-106. Polling place procedures.
13-22-107. Funding.
13-22-108. Reports.

Part 1
General Provisions

13-22-101. Short title. This chapter may be cited as the "Youth Voting Act".

History: En. Sec. 1, Ch. 348, L. 1991.

13-22-102. Purpose and intent. The intent of the legislature is to establish a nonpartisan youth voting program that will:

(1) provide the youth of Montana with practical experience in the democratic process;

(2) increase the likelihood that Montana's youth will participate in the process as adult voters and encourage the participation of more parents in elections;

(3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any proposed ballot issue attempting to qualify for placement on a ballot; and

(4) be entirely funded through private donations.

History: **En. Sec. 2, Ch. 348, L. 1991; amd. Sec. 4, Ch. 481, L. 2007.**

13-22-103. Youth voting program established — program coordination — school participation. (1) There is a youth voting program for minors to provide young Montanans direct experience in the voting process.

(2) The secretary of state, in consultation with the superintendent of public instruction, shall solicit county election administrators and schools throughout the state to participate in the youth voting program. The secretary of state and the superintendent of public instruction shall confer with the participating county election administrators and county superintendents of schools and, from among interested schools, shall facilitate the participation of as many schools in the program as available funds and other circumstances allow. A designated school may, at any time, decline to participate by notifying the secretary of state in writing.

History: **En. Sec. 3, Ch. 348, L. 1991.**

13-22-104. Program development. (1) The secretary of state and the superintendent of public instruction shall compile a program and establish a process whereby:

(a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;

(b) students are educated about current issues in a manner appropriate for each grade level involved;

(c) students cast facsimile or mock ballots at a location designated as a youth voting location or while accompanying an eligible voter to a polling place during regular elections; and

(d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner.

History: **En. Sec. 4, Ch. 348, L. 1991; amd. Sec. 1, Ch. 142, L. 1997.**

Cross-References

School instruction and special programs, Title 20, ch. 7.

13-22-105. Responsibilities of participating schools. Participating schools shall, in a timely manner, provide to students and their parents or guardians instruction and guidance on how to participate in the program, youth voter registration procedures and deadlines, a list of candidates and issues, and polling and balloting procedures.

History: **En. Sec. 5, Ch. 348, L. 1991.**

13-22-106. Polling place procedures. (1) The secretary of state and the superintendent of public instruction shall work with participating schools or county election officials, as necessary, to provide that:

(a) facsimile or mock ballots are distributed to locations designated as youth voting locations;

(b) participating students accompanied by an eligible voter are allowed to cast ballots in the youth election at regular polling places; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures.

History: **En. Sec. 6, Ch. 348, L. 1991; amd. Sec. 2, Ch. 142, L. 1997.**

13-22-107. Funding. (1) Except for compensation for time spent by employees of the secretary of state and the superintendent of public instruction, public money may not be used to support or fund the youth voting program established in this chapter.

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program.

History: En. Sec. 7, Ch. 348, L. 1991; amd. Sec. 41, Ch. 475, L. 2003.

Cross-References

School finance, Title 20, ch. 9.

13-22-108. Reports. (1) Each biennium, the secretary of state shall provide, upon request, a report to the legislature outlining the program's effectiveness in achieving its objectives.

(2) Participating schools and agencies shall provide to the secretary of state information regarding the youth voting program for the secretary of state's report to the legislature.

History: En. Sec. 8, Ch. 348, L. 1991.

CHAPTERS 23 AND 24
RESERVED

CHAPTER 25
ELECTIONS FOR FEDERAL OFFICE

Part 1 — Presidential Elections

13-25-101. Nomination of electors — ballot.
13-25-102. Election of electors.
13-25-103. Returns — lists of electors elected.
13-25-104. Meeting and voting of electors.
13-25-105. Lists of persons voted for.
13-25-106. Compensation of electors.
13-25-107. Vacancy in office of elector.

Part 2 — Congressional Elections

13-25-201. Election of United States senators and representatives.
13-25-202. Vacancy in office of United States senator.
13-25-203. Vacancy in office of United States representative.
13-25-204. Certificates issued by governor.
13-25-205. Nominations for special election.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Reports of contributions and expenditures required of candidates for federal office, 13-37-225.

Part 1
Presidential Elections

Part Cross-References

Presidential elections, Art. II, sec. 1, U.S. Const.; amend. 12, U.S. Const.

13-25-101. Nomination of electors — ballot. (1) In the manner and number provided by law, each political party qualified under 13-10-601 shall nominate presidential electors for this state and file with the secretary of state certificates of nomination in a form and by the date prescribed by the secretary of state. However, in the event of the death of a candidate for president or vice president after a certificate of nomination has been filed, a new candidate for president or vice president, or both, may be nominated for the affected political party and a new certificate of nomination may be filed with the secretary of state by the date prescribed by the secretary of state.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(3) The names of candidates for electors of president and vice president may not appear on the ballot.

History: **En. Sec. 215, Ch. 368, L. 1969; R.C.M. 1947, 23-4302(1) thru (3); amd. Sec. 208, Ch. 571, L. 1979; amd. Sec. 34, Ch. 250, L. 1985; amd. Sec. 9, Ch. 390, L. 1993; amd. Sec. 7, Ch. 85, L. 1997; amd. Sec. 5, Ch. 537, L. 2001; amd. Sec. 80, Ch. 414, L. 2003; amd. Sec. 30, Ch. 273, L. 2007.**

Cross-References

Ballot form and uniformity, 13-12-202.

13-25-102. Election of electors. (1) On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors for president and vice president of the United States as are allocated to this state.

(2) The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: **(1)En. Sec. 214, Ch. 368, L. 1969; Sec. 23-4301, R.C.M. 1947; (2)En. Sec. 215, Ch. 368, L. 1969; Sec. 23-4302, R.C.M. 1947; R.C.M. 1947, 23-4301, 23-4302(4).**

13-25-103. Returns — lists of electors elected. (1) The votes for candidates for president and vice president shall be given, received, returned, and canvassed as the votes are given, returned, and canvassed for candidates for congress.

(2) The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and delivered by the latter to the college of electors at the hour of their meeting.

History: **En. Sec. 216, Ch. 368, L. 1969; R.C.M. 1947, 23-4303.**

13-25-104. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one person for president and one for vice president of the United States.

(3) The electors shall cast their ballots for the persons who received the highest number of votes for president and vice president of the United States, respectively, in the most recently conducted general election in the state of Montana.

History: **En. Sec. 217, Ch. 368, L. 1969; R.C.M. 1947, 23-4304; amd. Sec. 1, Ch. 61, L. 1981.**

13-25-105. Lists of persons voted for. The electors shall make lists of the persons voted for as president and vice president; indicate the number of votes for each; and certify, seal, and transmit the lists as prescribed by laws of the United States.

History: **En. Sec. 218, Ch. 368, L. 1969; R.C.M. 1947, 23-4305.**

13-25-106. Compensation of electors. Electors must receive the same pay and mileage that is allowed to members of the legislature. Payments must be certified by the secretary of state and paid by the state treasurer from the state general fund.

History: **En. Sec. 219, Ch. 368, L. 1969; R.C.M. 1947, 23-4306; amd. Sec. 50, Ch. 42, L. 1997.**

Cross-References

Pay and mileage allowed to legislators, Title 5, ch. 2, part 3.

13-25-107. Vacancy in office of elector. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: **En. Sec. 220, Ch. 368, L. 1969; R.C.M. 1947, 23-4307.**

Part 2
Congressional Elections

Part Cross-References

Election to Congress generally, Art. I, sec. 2, U.S. Const.; amend. 17, U.S. Const.

Time, place, and manner of elections, Art. I, sec. 4, U.S. Const.

13-25-201. Election of United States senators and representatives. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor.

History: **En. Sec. 221, Ch. 368, L. 1969; amd. Sec. 51, Ch. 365, L. 1977; R.C.M. 1947, 23-4401.**

Cross-References

Manner of election of Governor, Art. VI, sec. 2, Mont. Const.

13-25-202. Vacancy in office of United States senator. (1) If a vacancy occurs in the office of United States senator, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969; amd. Sec. 52, Ch. 365, L. 1977; R.C.M. 1947, 23-4402.

13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term must be held no less than 85 or more than 100 days from the date on which the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election must be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

History: En. 23-4405 by Sec. 53, Ch. 365, L. 1977; R.C.M. 1947, 23-4405; amd. Sec. 209, Ch. 571, L. 1979; amd. Sec. 35, Ch. 250, L. 1985; amd. Sec. 11, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (2) near beginning substituted "no less than 85 or more than 100 days from the date" for "no less than 75 or more than 90 days from the time"; and made minor changes in style. Amendment effective October 1, 2009.

13-25-204. Certificates issued by governor. Upon receipt of the report of the canvass required by 13-15-507, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969; R.C.M. 1947, 23-4403; amd. Sec. 53, Ch. 575, L. 1981.

13-25-205. Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties must be made no later than 85 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5 p.m. of the 85th day before the election.

History: En. Sec. 210, Ch. 571, L. 1979; amd. Sec. 36, Ch. 250, L. 1985; amd. Sec. 12, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (1) in first sentence after "office of" deleted "United States senator or" and in second sentence substituted "85 days" for "75 days"; in (2) substituted "85th day" for "75th day"; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 26
CONVENTION TO RATIFY AMENDMENTS TO UNITED STATES CONSTITUTION

Part 1 — Ratification of Amendments

13-26-101. Convention to be held.
13-26-102. Delegates to constitutional convention.
13-26-103. Nomination of delegates.
13-26-104. Determination of election results.
13-26-105. Ballot form.
13-26-106. Time for convention of delegates.
13-26-107. Operation of the convention.
13-26-108. Compensation of delegates and officers.
13-26-109. Certificate of result — transmission to secretary of state of United States.
13-26-110. Qualifications of petitioners and electors.
13-26-111. Federal acts to supersede state provisions concerning amendments.

Chapter Cross-References

Amendment of United States Constitution, Art. V, U.S. Const.

Definitions applicable to this chapter, 13-1-101.

Part 1
Ratification of Amendments

13-26-101. Convention to be held. If congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969; R.C.M. 1947, 23-4601.

13-26-102. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislature. Each district shall have delegates equal to the number of members it is entitled to in the legislature.

(2) Delegates shall be elected at the next primary or general election after congress has proposed the amendment or at a special election called by the governor.

(3) Except as otherwise provided in this chapter, the election shall be in accordance with the laws for the election of members of the legislature.

History: En. Sec. 237, Ch. 368, L. 1969; R.C.M. 1947, 23-4602.

Cross-References

Size of Legislature and representation of each district, Art. V, sec. 2 and 14, Mont. Const.; Title 5, ch. 1.

13-26-103. Nomination of delegates. (1) Nominations for the office of delegate must be made:

(a) by petition signed by not less than 100 voters of the district;

(b) without political designation; and

(c) as "in favor of" or "opposed to" ratification of the proposed amendment.

(2) Petitions and acceptances must be filed not less than 85 days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969; R.C.M. 1947, 23-4603; amd. Sec. 37, Ch. 250, L. 1985; amd. Sec. 13, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (2) substituted "85 days" for "75 days"; and made minor changes in style. Amendment effective October 1, 2009.

13-26-104. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, the total votes cast for all candidates "in favor of" ratification, the votes cast for each candidate "opposed to" ratification, and the total votes cast for all candidates "opposed to" ratification shall be ascertained.

(2) From the side receiving the greater number of votes, those candidates (equal in number to the number of delegates to be elected) receiving the highest number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969; R.C.M. 1947, 23-4604.

13-26-105. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969; R.C.M. 1947, 23-4605.

13-26-106. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a.m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969; R.C.M. 1947, 23-4606.

13-26-107. Operation of the convention. A majority of the total number of delegates constitutes a quorum. The convention:

(1) may choose a president, secretary, and other necessary officers;

(2) may make rules governing the procedure of the convention; and

(3) shall judge the qualifications and election of its members.

History: En. Sec. 243, Ch. 368, L. 1969; R.C.M. 1947, 23-4607.

13-26-108. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislature. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 242, Ch. 368, L. 1969; R.C.M. 1947, 23-4608.

Cross-References

Mileage and per diem provided to legislators, 5-2-301.

13-26-109. Certificate of result — transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States. A duplicate of the certificate shall be filed with the secretary of state of Montana.

History: **En. Sec. 244, Ch. 368, L. 1969; R.C.M. 1947, 23-4609; amd. Sec. 211, Ch. 571, L. 1979.**

13-26-110. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by the laws on registration.

History: **En. Sec. 245, Ch. 368, L. 1969; R.C.M. 1947, 23-4610.**

Cross-References

Laws on registration, Title 13, ch. 2.

13-26-111. Federal acts to supersede state provisions concerning amendments. If congress, by resolution or statute, prescribes how the convention shall be constituted and held, this chapter is inoperative, and the convention shall be constituted and held as congress directs. All state officers are directed to take action to constitute the convention as authorized by congress and act as if acting under state statute.

History: **En. Sec. 246, Ch. 368, L. 1969; R.C.M. 1947, 23-4611.**

CHAPTER 27
BALLOT ISSUES

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Chapter Cross-References

Initiative, Art. III, sec. 4, Mont. Const.
Referendum, Art. III, sec. 5, Mont. Const.
Initiative for Constitutional Convention, Art. XIV, sec. 2, Mont. Const.
Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.
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Part 1
General Provisions

13-27-101. Establishment of initiative and referendum procedures. The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

History: En. 37-115 by Sec. 1, Ch. 342, L. 1977; R.C.M. 1947, 37-115.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.
Referendum, Art. III, sec. 5, Mont. Const.
Initiative for Constitutional Convention, Art. XIV, sec. 2, Mont. Const.
Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.
Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-102. Who may petition and gather signatures. (1) A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

(2) A person gathering signatures for the initiative, the referendum, or to call a constitutional convention:

(a) must be a resident, as provided in 1-1-215, of the state of Montana; and

(b) may not be paid anything of value based upon the number of signatures gathered.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part); amd. Sec. 5, Ch. 481, L. 2007.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

13-27-103. Sufficiency of signature. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part); amd. Sec. 1, Ch. 494, L. 1979.

Cross-References

Register of electors, 13-2-112.

13-27-104. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the third Friday of the fourth month prior to the election at which they are to be voted upon by the people.

History: En. 37-125 by Sec. 11, Ch. 342, L. 1977; R.C.M. 1947, 37-125; amd. Sec. 4, Ch. 359, L. 1991.

Cross-References

Time for filing of petition for initiative, Art. III, sec. 4, Mont. Const.

Time for filing of petition for referendum, Art. III, sec. 5, Mont. Const.

13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, other than a constitutional amendment, approved by the people is effective on October 1 following approval. If the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) A constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on July 1 following approval unless the amendment provides otherwise.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election.

History: En. 37-137 by Sec. 23, Ch. 342, L. 1977; R.C.M. 1947, 37-137; amd. Sec. 1, Ch. 73, L. 1981; amd. Sec. 8, Ch. 79, L. 1983; amd. Sec. 16, Ch. 298, L. 1987.

Cross-References

Suspension by petition, Art. III, sec. 5, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-106. Violations — penalties. A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. 37-138 by Sec. 24, Ch. 342, L. 1977; R.C.M. 1947, 37-138.

13-27-107 through 13-27-110 reserved.

13-27-111. Definitions. As used in 13-27-112, 13-27-113, and this section, unless otherwise indicated by the context, the following definitions apply:

(1) "Commissioner" means the commissioner of political practices provided for in 13-37-102.

(2) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.

(3) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.

(4) "Signature gatherer" means an individual who collects signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention.

History: En. Sec. 1, Ch. 117, L. 1999; amd. Sec. 1, Ch. 323, L. 2003; amd. Sec. 3, Ch. 479, L. 2005.

13-27-112. Required reports — time and manner of reporting — exceptions — penalty. (1) Except as provided in this section, a person who employs a paid signature gatherer shall file with the commissioner reports containing those matters required by Title 13, chapter

37, part 2, for a political committee organized to support or oppose a ballot issue or for an independent committee that receives contributions and makes expenditures in connection with a ballot issue, as applicable. If a person who employs a paid signature gatherer is required by Title 13, chapter 37, part 2, to file a report pursuant to those provisions, the person need not file a duplicate report pursuant to this section, but shall report the matter required by subsection (2) as part of that report. As used in this section, "a person who employs a paid signature gatherer" means a political party, political committee, or other person seeking to place a ballot issue before the electors and does not mean an individual who is part of the same signature gathering company, partnership, or other business organization that directly hires, supervises, and pays an individual who is a signature gatherer.

(2) The reports required by subsection (1) must include the amount paid to a paid signature gatherer.

(3) Reports filed pursuant to this section must be filed at the same time, in the same manner, including the certification required by 13-37-231, and upon the same forms as required for reports filed pursuant to Title 13, chapter 37, part 2, except as the rules of the commissioner may otherwise provide.

(4) A person who violates subsection (1) is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

History: En. Sec. 2, Ch. 117, L. 1999.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

13-27-113. Powers and duties of commissioner. (1) The commissioner has the same powers and duties regarding the regulation of signature gatherers, as provided in 13-27-112 and this section, as the commissioner has regarding the control of campaign practices as provided in Title 13, chapter 37, including the investigation of alleged violations of 13-27-112 and the issuance of orders of noncompliance for and prosecution of violations of 13-27-112.

(2) The commissioner may adopt rules to implement 13-27-112.

History: En. Sec. 3, Ch. 117, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2
Form of Petitions

13-27-201. Form of petition generally. (1) A petition for the initiative, for the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 ½ x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the issue to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the issue proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the issue must be in the bill form provided in the most recent edition of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the issue must be attached to each section.

(3) An internet posting of petition language must include a statement that the petition language and format may not be modified. An internet posting must include an affidavit in substantially the same form as prescribed by the secretary of state pursuant to 13-27-302.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(1), (2); amd. Sec. 1, Ch. 400, L. 1979; amd. Sec. 53, Ch. 545, L. 1995; amd. Sec. 2, Ch. 323, L. 2003; amd. Sec. 6, Ch. 481, L. 2007.

13-27-202. Recommendations — approval of form required. (1) A proponent of a ballot issue shall submit the text of the proposed issue to the secretary of state together with draft ballot statements intended to comply with 13-27-312. Petitions may not be circulated for the purpose of signature gathering more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall forward a copy of the text of the proposed issue and statements to the legislative services division for review.

(2) (a) The legislative services division staff shall review the text and statements for clarity, consistency, and conformity with the most recent edition of the bill drafting manual furnished by the legislative services division, the requirements of 13-27-312, and any other factors that the staff considers when drafting proposed legislation.

(b) Within 14 days after submission of the text and statements, the legislative services division staff shall recommend in writing to the proponent revisions to the text and revisions to the statements to make them consistent with any recommendations for change to the text and the requirements of 13-27-312 or state that no revisions are recommended.

(c) The proponent shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended revisions. If revisions are not recommended, a response is not required.

(3) The legislative services division shall furnish a copy of the correspondence provided for in subsection (2) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(4) Before a petition may be circulated for signatures, the final text of the proposed issue and ballot statements must be submitted to the secretary of state. The secretary of state shall reject the proposed issue if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. If accepted, the secretary of state shall refer a copy of the proposed issue and statements to the attorney general for a determination as to the legal sufficiency of the issue and for approval of the petitioner's ballot statements and for a determination pursuant to 13-27-312 as to whether a fiscal note is necessary.

(5) (a) The secretary of state shall review the legal sufficiency opinion and ballot statements of the petitioner, as approved by the attorney general and received pursuant to 13-27-312.

(b) If the attorney general approves the proposed issue, the secretary of state shall immediately send to the person submitting the proposed issue a sample petition form, including the text of the proposed issue, the statement of purpose, and the statements of implication, as prepared by the petitioner, reviewed by the legislative services division, and approved by the attorney general and in the form provided by this part. A signature gatherer may circulate the petition only in the form of the sample prepared by the secretary of state. The secretary of state shall immediately provide a copy of the sample petition form to any interested parties who have made a request to be informed of an approved petition.

(c) If the attorney general rejects the proposed issue, the secretary of state shall send written notice to the person who submitted the proposed issue of the rejection, including the attorney general's legal sufficiency opinion.

(d) If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the proposed issue.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(3); amd. Sec. 2, Ch. 400, L. 1979; amd. Sec. 1, Ch. 488, L. 1981; amd. Sec. 1, Ch. 4, L. 1983; amd. Sec. 5, Ch. 359, L. 1991; amd. Sec. 54, Ch. 545, L. 1995; amd. Sec. 51, Ch. 42, L. 1997; amd. Sec. 1, Ch. 191, L. 1999; amd. Sec. 6, Ch. 537, L. 2001; amd. Sec. 3, Ch. 323, L. 2003; amd. Sec. 7, Ch. 481, L. 2007.

13-27-203. Numbering of petitions. The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(4).

13-27-204. Petition for initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-half of the counties sign this petition and the total number of voters signing this petition is _____, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the ____________, 20__, general election ballot:

(Title of initiative written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the initiative, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.

History: En. 37-118 by Sec. 4, Ch. 342, L. 1977; R.C.M. 1947, 37-118; amd. Sec. 2, Ch. 488, L. 1981; amd. Sec. 18, Ch. 51, L. 1999; amd. Sec. 7, Ch. 537, L. 2001; amd. Sec. 4, Ch. 323, L. 2003; amd. Sec. 8, Ch. 481, L. 2007.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-205. Petition for referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ____, Senate (House) Bill Number ____ will appear on the next general election ballot. If a majority of voters vote for this referendum at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ____, passed by the legislature on ___________ on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the referendum, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the referendum on the ballot and does not necessarily mean the signer agrees with the referendum.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.

History: En. 37-119 by Sec. 5, Ch. 342, L. 1977; R.C.M. 1947, 37-119; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 488, L. 1981; amd. Sec. 8, Ch. 537, L. 2001; amd. Sec. 5, Ch. 323, L. 2003; amd. Sec. 9, Ch. 481, L. 2007.

Cross-References

Referendum, Art. III, sec. 5, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there will be a constitutional convention:

PETITION TO PLACE
INITIATIVE NO.____, CALLING FOR
A CONSTITUTIONAL CONVENTION, ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is _____, the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the _______________, 20__, general election ballot:

(Title of the initiative written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must also contain spaces for the signature, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.

History: En. 37-120 by Sec. 6, Ch. 342, L. 1977; R.C.M. 1947, 37-120; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 4, Ch. 488, L. 1981; amd. Sec. 19, Ch. 51, L. 1999; amd. Sec. 9, Ch. 537, L. 2001; amd. Sec. 6, Ch. 323, L. 2003.

Cross-References

Initiative for Constitutional Convention, Art. XIV, sec. 2, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL
AMENDMENT NO.____ ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of one-half of the counties sign this petition and the total number of voters signing the petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ___________, 20__, general election ballot:

(Title of the proposed constitutional amendment written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the constitutional amendment, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.

History: En. 37-121 by Sec. 7, Ch. 342, L. 1977; R.C.M. 1947, 37-121; amd. Sec. 5, Ch. 488, L. 1981; amd. Sec. 20, Ch. 51, L. 1999; amd. Sec. 10, Ch. 537, L. 2001; amd. Sec. 7, Ch. 323, L. 2003; amd. Sec. 10, Ch. 481, L. 2007.

Cross-References

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-208. Petitions to be made available in each county election administrator's office. Upon final approval of a proposed ballot issue as provided in 13-27-202, the secretary of state shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading in the administrator's office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the proposed ballot issue a fee, which must be set and deposited in accordance with 2-15-405.

History: En. Sec. 1, Ch. 158, L. 1991; amd. Sec. 2, Ch. 191, L. 1999; amd. Sec. 10, Ch. 396, L. 2001; amd. Sec. 11, Ch. 537, L. 2001; amd. Sec. 11, Ch. 481, L. 2007.

13-27-209. Issues referred by legislature. The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

History: En. Sec. 12, Ch. 481, L. 2007.

13-27-210. Physical prevention of obtaining signatures or physical intimidation of signature gatherers prohibited. A person may not knowingly or purposefully physically prevent an individual from obtaining signatures or attempting to obtain signatures on a petition for a ballot issue or physically intimidate another individual when that individual is obtaining or attempting to obtain signatures on a petition for a ballot issue. A person who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment for not more than 90 days, or by both a fine and imprisonment.

History: **En. Sec. 13, Ch. 481, L. 2007.**

Part 3
Submission and Processing of Petitions

13-27-301. Submission of petition sheets — withdrawal of signatures. (1) Signed sheets or sections of petitions with original signatures must be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state.

(2) If it is impractical to submit signed sheets or sections of petitions with original signatures by the deadline provided in subsection (1), a copy or facsimile may be submitted to the proper county official by the deadline. Signed sheets or sections of petitions with original signatures must be submitted within 7 calendar days after the deadline. Failure to submit signed sheets or sections of petitions with original signatures within 7 calendar days will invalidate the signed sheets or sections submitted by copy or facsimile.

(3) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have the elector's signature withdrawn from a petition.

History: **En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(1); amd. Sec. 3, Ch. 400, L. 1979; (2)En. Sec. 15, Ch. 298, L. 1987; amd. Sec. 6, Ch. 359, L. 1991; amd. Sec. 8, Ch. 323, L. 2003.**

Cross-References

Election Administrator as registration official, 13-1-301.

Date of filing of petitions, 13-27-104.

13-27-302. Certification of signatures. An affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who is the signature gatherer), swear that I gathered the signatures on the petition to which this affidavit is attached on the stated dates, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address or have the telephone number following the person's signature, and that the signers knew the contents of the petition before signing the petition.

____
(Date on which the first signature was gathered)

____
(Signature of petition signature gatherer)

____
(Address of petition signature gatherer)

Subscribed and sworn to before me this ___ day of ________, 20__
Seal

____
(Person authorized to take oaths)

____
(Title or notarial information)

History: **En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(2); amd. Sec. 6, Ch. 488, L. 1981; amd. Sec. 21, Ch. 51, L. 1999; amd. Sec. 12, Ch. 537, L. 2001; amd. Sec. 9, Ch. 323, L. 2003; amd. Sec. 14, Ch. 481, L. 2007.**

Cross-References

Officers who may administer oaths, 1-6-101.

13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures. (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a referendum or a call of a constitutional convention under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before the first gubernatorial election following the filing of the plan, the new districts must be used with the number of signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207.

History: **En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(3), (4); amd. Sec. 4, Ch. 400, L. 1979; (2)En. Sec. 1, Ch. 512, L. 1983; amd. Sec. 17, Ch. 298, L. 1987; amd. Sec. 1, Ch. 374, L. 1995; amd. Sec. 10, Ch. 323, L. 2003.**

Cross-References

Register of electors, 13-2-112.

13-27-304. County official to forward verified sheets. The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ____________, Secretary of State of the state of Montana:

I, ____________, ___________ (title) of the County of __________, certify that I have examined the attached (section containing ____ sheets) or (____ sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. ____ in the manner prescribed by law; and I believe that ____ (number) signatures in (Legislative Representative District No. ____ or the County of ____) (repeat for each district or county included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address, residence address, or telephone number is completed for each valid signature.

Signed:______________(Date) ____________________(Signature)
Seal ________________________(Title)

History: **En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(1); amd. Sec. 13, Ch. 537, L. 2001; amd. Sec. 11, Ch. 323, L. 2003.**

Cross-References

Role of Secretary of State, Title 13, ch. 1, part 2.

13-27-305. Retention of copies by county official. The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of the official's office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

History: **En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(2); amd. Sec. 86, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of the elector's belief and a request for comparison of those signatures that the elector believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official shall compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(5); amd. Sec. 5, Ch. 400, L. 1979; amd. Sec. 87, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-27-307. Consideration and tabulation of signatures by secretary of state. (1) The secretary of state shall consider and tabulate only the signatures on petitions that are certified by the proper county official. The secretary of state may reject any petition that does not meet statutory requirements. The secretary of state shall return a rejected petition to the proper county official. The county official shall correct the error, when applicable, or send or deliver the rejected petition to the signature gatherer. The secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official must be in substantially the following form:

State of Montana)
)ss.
County of__________)

I, __________ (name), a qualified and acting notary public in and for the above-named county and state, certify that I am personally acquainted with all of the following-named electors whose signatures are affixed to the attached (petition) (copy of a petition) and I know that they are registered electors of the state of Montana and of the county or legislative district written after their names in the petition and that their post-office addresses are correctly stated in the petition.

____ (Names of electors)

In testimony whereof, I have set my hand and official seal this____ day of_________, 20__

_______________________________ (Signature)

Seal _______________________________(Notarial information)

History: En. 37-124 by Sec. 10, Ch. 342, L. 1977; R.C.M. 1947, 37-124; amd. Sec. 212, Ch. 571, L. 1979; amd. Sec. 22, Ch. 51, L. 1999; amd. Sec. 12, Ch. 323, L. 2003.

Cross-References

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-308. Certification of petition to governor. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, the secretary of state shall immediately certify to the governor that the completed petition has been officially filed.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part); amd. Sec. 88, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-27-309. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-310. Repealed. Sec. 27, Ch. 481, L. 2007.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(1), (2); amd. Sec. 6, Ch. 400, L. 1979.

13-27-311. Publication of proposed constitutional amendments. (1) If a constitutional amendment proposed by initiative is submitted to the people, the secretary of state shall have the proposed amendment published in full twice each month for 2 months prior to the election at which it is to be voted upon by the people in not less than one newspaper of general circulation in each county.

(2) (a) For a proposed constitutional amendment referred to the voters by the legislature, the secretary of state may arrange for newspaper publication or radio or television broadcast of the amendment, in each county.

(b) The ballot statements reviewed or prepared by the attorney general for the amendment, as described in 13-27-312 or 13-27-315, are sufficient for the publication allowed by this subsection (2) and should be made at least twice each month for 2 months prior to the election.

(c) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors.

History: **En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973; amd. Sec. 26, Ch. 342, L. 1977; amd. Sec. 6, Ch. 365, L. 1977; R.C.M. 1947, 23-2802; amd. Sec. 213, Ch. 571, L. 1979; amd. Sec. 52, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 297 in (1) near beginning substituted "constitutional amendment proposed by initiative" for "proposed constitutional amendment"; in (2)(a) near beginning inserted language concerning a constitutional referendum; in (2)(b) at beginning substituted "The ballot statements reviewed or prepared by the attorney general for the amendment" for "A summary of the amendment as provided by the attorney general" and near middle substituted "allowed by this subsection (2)" for "required by this section"; inserted (2)(c) requiring election administrator to select method of notification; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Amendment by referendum, Art. XIV, sec. 8, Mont. Const.
Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-312. Review of proposed ballot issue and statements by attorney general — preparation of fiscal note. (1) Upon receipt of a proposed ballot issue and statements from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the proposed issue for legal sufficiency as provided in this section and shall determine whether the ballot statements comply with the requirements of this section.

(2) The attorney general shall, in reviewing the ballot statements, endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall review the ballot statements to determine if they contain the following matters:

(a) a statement, not to exceed 100 words, explaining the purpose of the issue; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the issue.

(3) If the proposed ballot issue has an effect on the revenue, expenditures, or fiscal liability of the state, the attorney general shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the ballot issue, is responsible for preparing the fiscal note and shall return it to the attorney general within 10 days. If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words, and the statement must be used on the petition and ballot if the issue is placed on the ballot.

(4) The ballot statements must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.

(5) Unless altered by the court under 13-27-316, the statement of purpose is the petition title for the issue circulated by the petition and the ballot title if the issue is placed on the ballot.

(6) The statements of implication must be written so that a positive vote indicates support for the issue and a negative vote indicates opposition to the issue and must be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

FOR extending the right to vote to persons 18 years of age

AGAINST extending the right to vote to persons 18 years of age

(7) The attorney general shall review the proposed ballot issue for legal sufficiency. As used in this part, "legal sufficiency" means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors. Review of the petition for legal sufficiency does not include consideration of the substantive legality of the issue if approved by the voters. The attorney general shall also determine if the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(8) (a) Within 30 days after receipt of the proposed issue from the secretary of state, the attorney general shall forward to the secretary of state an opinion as to the issue's legal sufficiency.

(b) If the attorney general determines that the proposed ballot issue is legally sufficient, the attorney general shall also forward to the secretary of state the petitioner's ballot statements that comply with the requirements of this section. If the attorney general determines in writing that a ballot statement clearly does not comply with the requirements of this section, the attorney general shall prepare a statement that complies with the requirements of this section, forward that statement to the secretary of state as the approved statement, and provide a copy to the petitioner. The attorney general shall give the secretary of state notice of whether the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(c) If the attorney general determines that the proposed ballot issue is not legally sufficient, the secretary of state may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-316 and the attorney general has approved or prepared ballot statements under this section.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(3); amd. Sec. 7, Ch. 400, L. 1979; amd. Sec. 1, Ch. 336, L. 1981; amd. Sec. 7, Ch. 488, L. 1981; amd. Sec. 10, Ch. 3, L. 1985; amd. Sec. 7, Ch. 359, L. 1991; amd. Sec. 3, Ch. 191, L. 1999; amd. Sec. 1, Ch. 132, L. 2003; amd. Sec. 15, Ch. 481, L. 2007.

Cross-References

Secretary of State to certify ballot form, 13-27-501.

13-27-313. Repealed. Sec. 27, Ch. 481, L. 2007.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(4); amd. Sec. 8, Ch. 400, L. 1979.

13-27-314. Repealed. Sec. 19, Ch. 400, L. 1979.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(5).

13-27-315. Statements by attorney general on issues referred by legislature. Upon receipt of an issue referred by the legislature from the secretary of state pursuant to 13-27-209, the attorney general shall prepare and forward to the secretary of state, within 30 days, ballot statements as provided in 13-27-312, except that the attorney general may not prepare statements of implication of a vote for or against a ballot issue if the statements have been provided by the legislature.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(6); amd. Sec. 9, Ch. 400, L. 1979; amd. Sec. 2, Ch. 336, L. 1981; amd. Sec. 16, Ch. 481, L. 2007.

13-27-316. Court review of attorney general opinion or approved petitioner statements. (1) If the proponents of a ballot issue believe that the ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of the attorney general's determination regarding legal sufficiency provided for in 13-27-202, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a ballot issue believe that the petitioner ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition. The attorney general shall respond to a complaint within 5 days.

(3) (a) Notice must be served upon the secretary of state and upon the attorney general.

(b) If the proceeding requests modification of ballot statements, an action brought under this section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 and must propose alternate ballot statements that satisfy the requirements of 13-27-312.

(c) (i) Pursuant to Article IV, section 7(2), of the Montana constitution, an action brought pursuant to this section takes precedence over other cases and matters in the supreme court. The court shall examine the proposed issue and the challenged statement or determination of the attorney general and shall as soon as possible render a decision as to the adequacy of the ballot statements or the correctness of the attorney general's determination.

(ii) If the court decides that the ballot statements do not meet the requirements of 13-27-312, it may order the attorney general to revise the statements within 5 days or certify to the secretary of state a statement that the court determines will meet the requirements of 13-27-312. A statement revised by the attorney general pursuant to the court's order or certified by the court must be placed on the petition for circulation and on the official ballot.

(iii) If the court decides that the attorney general's legal sufficiency determination is incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, any petitions supporting the issue are void and the issue may not appear on the ballot. A proponent of the ballot issue may resubmit a revised issue, pursuant to 13-27-202, subject to the deadlines provided in this chapter.

(iv) If the court decides that the attorney general's legal deficiency determination is incorrect and that a proposed issue complies with statutory and constitutional requirements governing submission of the issue to the electors, the attorney general shall prepare ballot statements pursuant to 13-27-312 and forward the statements to the secretary of state within 5 days of the court's decision.

(4) A petition for a proposed ballot issue may be circulated by a signature gatherer upon transmission of the sample petition form by the secretary of state pending review under this section. If, upon review, the attorney general or the supreme court revises the petition form or ballot statements, any petitions signed prior to the revision are void.

(5) An original proceeding in the supreme court under this section is the exclusive remedy for a challenge to the petitioner's ballot statements, as approved by the attorney general, or the attorney general's legal sufficiency determination. A ballot issue may not be invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

(6) This section does not limit the right to challenge a constitutional defect in the substance of an issue approved by a vote of the people.

History: En. Sec. 10, Ch. 400, L. 1979; amd. Sec. 3, Ch. 336, L. 1981; amd. Sec. 4, Ch. 191, L. 1999; amd. Sec. 14, Ch. 537, L. 2001; amd. Sec. 17, Ch. 481, L. 2007; amd. Sec. 18, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in (1) near beginning and in (2) near beginning after "ballot" substituted "issue" for "measure". Amendment effective October 1, 2009.

13-27-317. Contest of ballot issue petitions. (1) Any qualified elector may, within 30 days after the date on which the issue was certified to the governor, file an action in the district court in the county of residence of the qualified elector contesting the certification of a ballot issue for illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(2) If a court finds that illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures affected the outcome of the petition process and certification, the secretary of state shall decertify the contested ballot issue.

History: En. Sec. 18, Ch. 481, L. 2007.

Part 4
Voter Information Pamphlets

13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing information relevant to the election, including but not limited to the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;
(b) the form in which the issue will appear on the ballot;
(c) arguments advocating approval and rejection of the issue; and
(d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient as to where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may

arrange the information in the order that seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue.

History: Ap. p. Sec. 14, Ch. 342, L. 1977; Sec. 37-128, R.C.M. 1947; Ap. p. Sec. 74, Ch. 365, L. 1977; Sec. 37-111, R.C.M. 1947; R.C.M. 1947, 37-111(1), (2), 37-128(1); amd. Sec. 11, Ch. 400, L. 1979; amd. Sec. 4, Ch. 336, L. 1981; amd. Sec. 10, Ch. 390, L. 1993; amd. Sec. 31, Ch. 273, L. 2007.

13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments must be submitted to the secretary of state by committees appointed as provided in this section.

(2) The committee advocating approval of a legislative act referred to the people either by the legislature or by referendum petition or advocating approval of a constitutional amendment referred by the legislature must be composed of:

(a) one senator known to favor the referred ballot issue, appointed by the president of the senate;

(b) one representative known to favor the referred ballot issue, appointed by the speaker of the house of representatives; and

(c) one individual who need not be a member of the legislature, appointed by the first two members.

(3) (a) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature must be composed of:

(i) one senator appointed by the president of the senate;

(ii) one representative appointed by the speaker of the house of representatives; and

(iii) one individual who need not be a member of the legislature, appointed by the first two members.

(b) Whenever possible, the members must be known to have opposed the issue.

(4) The following must be three-member committees and must be appointed by the person submitting the ballot issue to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition must be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member must be appointed by the first four members. If possible, members must be known to favor rejection of the issue.

(6) A person may not be required to serve on any committee under this section, and except for legislative appointments made by the president of the senate or by the speaker of the house of representatives, the person making an appointment must have written acceptance of appointment from the appointee. If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments.

History: En. 37-128 by Sec. 14, Ch. 342, L. 1977; R.C.M. 1947, 37-128(2); amd. Sec. 214, Ch. 571, L. 1979; amd. Sec. 1, Ch. 549, L. 1983; amd. Sec. 18, Ch. 298, L. 1987; amd. Sec. 1, Ch. 47, L. 1997; amd. Sec. 1, Ch. 374, L. 1999; amd. Sec. 19, Ch. 481, L. 2007.

13-27-403. Appointment to committee. (1) Except as provided in subsection (2), appointments to committees advocating approval or rejection of an act referred to the people, a constitutional amendment proposed by the legislature, or a ballot issue referred to the people by referendum petition or proposed by any type of initiative petition must be made no later than 1 week prior to the deadline for filing arguments on the ballot issue under 13-27-406.

(2) Appointments to committees advocating approval or rejection of a ballot issue referred to the people by referendum petition or proposed by any type of initiative petition must be made no later than 1 week before the deadline for filing arguments on the ballot issue under 13-27-406. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection.

The submission must include the written acceptance of appointment from each appointee required by 13-27-402(6). If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments.

(3) Within 5 days after receiving notice under subsection (2) but not later than 5 days after the deadline set for appointment of committee members, the secretary of state shall notify the appointees to a committee appointed pursuant to subsection (1) or (2) by certified mail, with return receipt requested, of the deadlines for submission of the committee's arguments.

History: **En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(1), (2); amd. Sec. 2, Ch. 549, L. 1983; amd. Sec. 19, Ch. 298, L. 1987; amd. Sec. 8, Ch. 359, L. 1991; amd. Sec. 2, Ch. 47, L. 1997; amd. Sec. 20, Ch. 481, L. 2007.**

13-27-404. Committee presiding officer. The appointee of the president of the senate is the presiding officer of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a presiding officer at the time the appointments are made.

History: **En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(3); amd. Sec. 89, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $100 for a three-member committee and $200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, must be submitted to the secretary of state for payment from funds appropriated for that purpose.

History: **En. 37-130 by Sec. 16, Ch. 342, L. 1977; R.C.M. 1947, 37-130; amd. Sec. 12, Ch. 400, L. 1979; amd. Sec. 90, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a ballot issue is limited to a single side of a single 7 ½-inch by 10-inch page and must be filed, in a black-and-white, camera-ready format, with the secretary of state no later than 105 days before the election at which the issue will be voted on by the people. The argument must consist solely of written material prepared by the committee and may not consist of pictures, clippings, or other material. The written material must be prepared in the font and type style required by the secretary of state. With the goal of achieving readability and uniformity, the secretary of state shall prescribe a commonly used font and type style. A majority of the committee responsible for preparation shall approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

History: **En. 37-131 by Sec. 17, Ch. 342, L. 1977; R.C.M. 1947, 37-131; amd. Sec. 13, Ch. 400, L. 1979; amd. Sec. 2, Ch. 119, L. 1995; amd. Sec. 3, Ch. 47, L. 1997; amd. Sec. 2, Ch. 374, L. 1999.**

13-27-407. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue. The committees may prepare rebuttal arguments no longer than one-half the size of the arguments under 13-27-406 that must be filed, in a black-and-white, camera-ready format, with the secretary of state no later than 10 days after the deadline for filing the original arguments. The argument must consist solely of written material prepared by the committee and may not consist of pictures, clippings, or other material. The written material must be prepared in the font and type style required by the secretary of state. With the goal of achieving readability and uniformity, the secretary of state shall prescribe a commonly used font and type style. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument must be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

History: **En. 37-132 by Sec. 18, Ch. 342, L. 1977; R.C.M. 1947, 37-132; amd. Sec. 4, Ch. 47, L. 1997; amd. Sec. 3, Ch. 374, L. 1999.**

13-27-408. Rejection of improper arguments. The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(1).

13-27-409. Fact statement to be supported — liability for contents of argument. (1) A factual statement made in an argument advocating approval or rejection of a ballot issue or in a rebuttal argument to either of those arguments must be supported by documents filed by the proponents or opponents with the secretary of state within 2 business days of the date on which the statements are required to be filed with the secretary of state.

(2) Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(2); amd. Sec. 21, Ch. 481, L. 2007.

Cross-References

Civil liability for libel, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

13-27-410. Printing and distribution of voter information pamphlet. (1) At least 110 days before the election, the secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county who is on the active voter list, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing label may include an address line that addresses the voter or the current resident. The mailing must take place no later than 30 days before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

History: En. 37-134 by Sec. 20, Ch. 342, L. 1977; R.C.M. 1947, 37-134; amd. Sec. 14, Ch. 400, L. 1979; amd. Sec. 11, Ch. 390, L. 1993; amd. Sec. 3, Ch. 119, L. 1995; amd. Sec. 4, Ch. 208, L. 1999; amd. Sec. 42, Ch. 475, L. 2003; amd. Sec. 22, Ch. 586, L. 2005.

Cross-References

Election Administrator as registration official, 13-1-301.

Part 5
Election Procedure

13-27-501. Secretary of state to certify ballot form. (1) The secretary of state shall furnish to the official of each county responsible for preparation of the ballots, at the same time as the election administrator certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) The secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement, if applicable;

(e) the fiscal statement, if applicable;

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot; and

(g) a statement that the issue conflicts with one or more issues, referenced by number, that also appear on the ballot, if applicable.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(1); amd. Sec. 15, Ch. 400, L. 1979; amd. Sec. 5, Ch. 336, L. 1981; amd. Sec. 1, Ch. 669, L. 1983; (4)En. Sec. 2, Ch. 669, L. 1983; amd. Sec. 81, Ch. 414, L. 2003; amd. Sec. 22, Ch. 481, L. 2007.

Cross-References

Limitation on title of referred legislation, 5-4-102.
Role of Secretary of State, Title 13, ch. 1, part 2.
Title of ballot issue, 13-27-312, 13-27-316.

13-27-502. Preparation of ballots with ballot issues. (1) Each of the county officials responsible for the preparation of the ballots shall provide for the ballot issues to appear on the official ballot in the form and order in which the issues have been certified by the secretary of state.

(2) All ballot issues must be placed on the same official ballot as the candidates unless the secretary of state provides the election administrator with specific written approval for separate ballots. The secretary of state may issue an approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the same official ballot as the candidates.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(2); amd. Sec. 16, Ch. 400, L. 1979; amd. Sec. 54, Ch. 575, L. 1981; amd. Sec. 82, Ch. 414, L. 2003.

13-27-503. Determination of result of election. The votes on ballot issues must be counted, canvassed, and returned by the regular boards of judges, clerks, and officers in the same manner as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues must be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in the secretary of state's office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(1); amd. Sec. 55, Ch. 575, L. 1981; amd. Sec. 91, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.
Procedure for vote counting, Title 13, ch. 15.
Effective date of ballot issues, 13-27-105.

13-27-504. Copy of approved issues to be sent to legislative services division. The secretary of state shall send a certified copy of all ballot issues that have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the legislative services division at the same time that a certified copy of the statement of the canvass is transmitted to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(2); amd. Sec. 55, Ch. 545, L. 1995.

Cross-References

Publication and updating of code — Code Commissioner, Title 1, ch. 11.
Dissemination of laws and proceedings, Title 5, ch. 11, part 2.

CHAPTERS 28 THROUGH 34 RESERVED

CHAPTER 35
ELECTION AND CAMPAIGN PRACTICES AND CRIMINAL PROVISIONS

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Part 3 — Code of Fair Campaign Practices

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13-35-302. Candidates to be given opportunity to subscribe to campaign practices code.

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13-35-401. Short title.
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Chapter Cross-References

Standards of conduct, Title 2, ch. 2.
Elected official's business disclosure statement, 2-2-106.
Montana Recall Act, Title 2, ch. 16, part 6.
Promise of support or opposition at future election by lobbyist as unprofessional conduct, 5-7-102, 5-7-302.
City officers and employees — political activity, 7-3-1254, 7-3-4256, 7-3-4265.
Role and duties of County Clerk and Recorder, 7-4-2611.
Definitions applicable to this chapter, 13-1-101.
Commissioner of Political Practices responsible for investigating alleged violations of this chapter, 13-37-111.
Prosecution of violations by Commissioner, 13-37-113.
Power of County Attorney to investigate violations of this chapter, 13-37-125.
Bribery and corrupt influence, Title 45, ch. 7, part 1.
Limitation on political activity of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1
General Provisions

13-35-101. Election code not to supersede criminal code — statute of limitations. (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 45-1-205.

History: En. 23-47-101 by Sec. 1, Ch. 334, L. 1977; R.C.M. 1947, 23-47-101.

Cross-References

Political contributions of insurers prohibited, 33-18-305.
Montana criminal code, Title 45.

13-35-102. Trivial benefits not covered by criminal provisions. It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

History: En. 23-47-102 by Sec. 2, Ch. 334, L. 1977; R.C.M. 1947, 23-47-102.

13-35-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

History: En. 23-47-103 by Sec. 3, Ch. 334, L. 1977; R.C.M. 1947, 23-47-103.

Cross-References

Knowingly and misdemeanor defined, 45-2-101.
Misdemeanor penalty, 46-18-212.

13-35-104. Attempt as a violation. An attempt, as defined in 45-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 45-4-103.

History: En. 23-47-104 by Sec. 4, Ch. 334, L. 1977; R.C.M. 1947, 23-47-104.

13-35-105. Aiding and abetting. A person who is legally accountable, as provided in 45-2-302, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

History: En. 23-47-105 by Sec. 5, Ch. 334, L. 1977; R.C.M. 1947, 23-47-105.

13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), the individual must be removed from nomination or office, as the case may be, even though the individual was regularly nominated or elected.

History: En. 23-47-106 by Sec. 6, Ch. 334, L. 1977; R.C.M. 1947, 23-47-106; amd. Sec. 215, Ch. 571, L. 1979; amd. Sec. 92, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Salaries withheld when title contested, 2-16-202.
Vacancy created by removal, Title 2, ch. 16, part 5.
Definition of candidate and public office, 13-1-101.
Removal for violation of Title 13, ch. 37, 13-37-130.

13-35-107. Voiding election. (1) (a) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held:

(i) except as provided in subsection (1)(a)(ii), within 75 days of the finding; or

(ii) if the election was held pursuant to 13-1-104(1)(a) or 13-1-107(1), within 85 days of the finding.

(b) If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election must be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election must be commenced within 60 days of the date of the election in question.

History: En. 23-47-107 by Sec. 7, Ch. 334, L. 1977; R.C.M. 1947, 23-47-107; amd. Sec. 216, Ch. 571, L. 1979; amd. Sec. 38, Ch. 250, L. 1985; amd. Sec. 14, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (1)(a)(i) inserted exception clause; inserted (1)(a)(ii) providing that special election may be held within 85 days of court finding; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancy created by declaring election void, 2-16-501.
Procedure for filling vacancies on general election ballot, 13-10-327.

13-35-108. Powers of district court. In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

History: En. 23-47-108 by Sec. 8, Ch. 334, L. 1977; R.C.M. 1947, 23-47-108.

Cross-References

Injunctions, Title 27, ch. 19.

Part 2
Specific Provisions

Part Cross-References

Elected official's business disclosure statement, 2-2-106.
Ineligibility to hold public office because of conviction, 13-35-106.
Voiding election under certain circumstances, 13-35-107.
Political contributions of insurers prohibited, 33-18-305.

13-35-201. Electors and ballots. (1) An elector may not show the contents of the elector's ballot to anyone after it is marked. An elector may not place any mark upon the ballot by which it may be identified as the one voted by the elector.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. A person other than an election judge may not deliver a ballot to an elector.

(3) A person may not solicit an elector to show the elector's ballot after it is marked.

(4) An elector who does not vote a ballot delivered to the elector shall, before leaving the polling place, return the ballot to an election judge.

History: En. 23-47-109 by Sec. 9, Ch. 334, L. 1977; R.C.M. 1947, 23-47-109; amd. Sec. 93, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.
Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.

13-35-202. Conduct of election officials and election judges. An election officer or judge of an election may not:

(1) deposit in a ballot box a paper ballot that is not marked as official;

(2) examine an elector's ballot before putting the ballot in the ballot box;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or

(6) make a false statement in a certificate regarding affirmation.

History: En. 23-47-110 by Sec. 10, Ch. 334, L. 1977; R.C.M. 1947, 23-47-110; amd. Sec. 217, Ch. 571, L. 1979; amd. Sec. 83, Ch. 414, L. 2003.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.
Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.

13-35-203. Interference with officials. A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

History: En. 23-47-111 by Sec. 11, Ch. 334, L. 1977; R.C.M. 1947, 23-47-111.

13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in the person's official capacity, in contravention or violation of any provision of the election laws.

History: En. 23-47-112 by Sec. 12, Ch. 334, L. 1977; R.C.M. 1947, 23-47-112; amd. Sec. 94, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-35-205. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of nomination that has been filed;

(2) purposely causes a vote to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after it has been completed by the elector;

(5) adds a ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(6) causes a name to be placed on the registry lists other than in the manner provided by this title; or

(7) changes a poll list or checklist.

History: **En. 23-47-113 by Sec. 13, Ch. 334, L. 1977; R.C.M. 1947, 23-47-113; amd. Sec. 84, Ch. 414, L. 2003.**

Cross-References

Declaration for nomination, 13-10-201.

Certificates of nomination or election, 13-15-406, 13-15-504.

13-35-206. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces instructions for the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the voting station for the purpose of enabling a voter to prepare the voter's ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, checklists, ballots, ballot boxes, or other equipment for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting system with the intent to alter the outcome of an election;

(8) mutilates, injures, or destroys a ballot or appliance used in connection with a voting system; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination.

History: **En. 23-47-114 by Sec. 14, Ch. 334, L. 1977; R.C.M. 1947, 23-47-114; amd. Sec. 85, Ch. 414, L. 2003.**

Cross-References

Posting of election lists and instruction cards, 13-13-112.

Warning notice to be posted at polling place, 13-13-113.

13-35-207. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents the person's name or other information required upon the person's registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than the person's own to a petition, signs more than once for the same ballot issue, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law.

History: **En. 23-47-115 by Sec. 15, Ch. 334, L. 1977; R.C.M. 1947, 23-47-115; amd. Sec. 218, Ch. 571, L. 1979; amd. Sec. 23, Ch. 481, L. 2007.**

Cross-References

Declaration for nomination, 13-10-201.

Criminal provisions relating to signing ballot issues, 13-27-106.

13-35-208. Deceiving an elector. A person who deceives an elector voting under 13-13-118 or 13-13-119 is guilty of a misdemeanor.

History: **En. 23-47-116 by Sec. 16, Ch. 334, L. 1977; R.C.M. 1947, 23-47-116; amd. Sec. 56, Ch. 575, L. 1981.**

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-209. Fraudulent registration. (1) A person may not knowingly cause, procure, or allow the person to be registered in the official register of any election district of any county knowing that the person is not entitled to the registration.

(2) A person may not impersonate another and cause the impersonated person to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for registration, the court shall order the registration canceled.

History: En. 23-47-117 by Sec. 17, Ch. 334, L. 1977; R.C.M. 1947, 23-47-117; amd. Sec. 95, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Legislature required to insure against abuse of electoral process, Art. IV, sec. 3, Mont. Const.
Registration, Title 13, ch. 2.
Violation as misdemeanor, 13-35-103.

13-35-210. Limits on voting rights. (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

History: En. 23-47-118 by Sec. 18, Ch. 334, L. 1977; R.C.M. 1947, 23-47-118.

Cross-References

Legislature required to insure against abuse of electoral process, Art. IV, sec. 3, Mont. Const.
Qualifications of voter, 13-1-111.
Violation as misdemeanor, 13-35-103.

13-35-211. Electioneering — soliciting information from electors. (1) A person may not do any electioneering on election day within any polling place or any building in which an election is being held or within 100 feet of any entrance to the building in which the polling place is located, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) A person may not buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) A person within a polling place or any building in which an election is being held may not solicit from an elector, before or after the elector has marked a ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.

History: En. 23-47-119 by Sec. 19, Ch. 334, L. 1977; R.C.M. 1947, 23-47-119; amd. Sec. 219, Ch. 571, L. 1979; amd. Sec. 1, Ch. 192, L. 1985; amd. Sec. 1, Ch. 216, L. 1989; amd. Sec. 2, Ch. 401, L. 2001.

Cross-References

Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.

13-35-212. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-120 by Sec. 20, Ch. 334, L. 1977; R.C.M. 1947, 23-47-120.

13-35-213. Preventing public meetings of electors. (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

History: En. 23-47-121 by Sec. 21, Ch. 334, L. 1977; R.C.M. 1947, 23-47-121.

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-214. Illegal influence of voters. A person may not, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument in order to aid or promote the candidate's nomination or election, except that the candidate may publicly announce or define the candidate's choice or purpose in relation to an election in which the candidate may be called to take part if elected.

History: En. 23-47-122 by Sec. 22, Ch. 334, L. 1977; R.C.M. 1947, 23-47-122; amd. Sec. 96, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

City elections — improper influence of voters, 7-3-4265.
Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.
Bribery in official and political matters, 45-7-101.
Threats and other improper influence in official and political matters, 45-7-102.

13-35-215. Illegal consideration for voting. A person, directly or indirectly, individually or through any other person, may not:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person.

History: En. 23-47-123 by Sec. 23, Ch. 334, L. 1977; R.C.M. 1947, 23-47-123; amd. Sec. 220, Ch. 571, L. 1979; amd. Sec. 97, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Violation as misdemeanor, 13-35-103.
Bribery in official and political matters, 45-7-101.

13-35-216. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-124 by Sec. 24, Ch. 334, L. 1977; R.C.M. 1947, 23-47-124.

13-35-217. Officers not to influence voter. An officer, while acting in an official capacity, may not, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to the elector's original intention or desire.

History: En. 23-47-125 by Sec. 25, Ch. 334, L. 1977; R.C.M. 1947, 23-47-125; amd. Sec. 57, Ch. 575, L. 1981; amd. Sec. 98, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.

13-35-218. Coercion or undue influence of voters. (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) A person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may not, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of the person's religious duty or the interest of any corporation, church, or other organization.

(3) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

(4) A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at an election in order to prevent the election from being fairly held and lawfully conducted.

(5) A person on election day may not obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any way interferes with the election process or obstructs the access of voters to or from the polling place.

History: En. 23-47-126 by Sec. 26, Ch. 334, L. 1977; R.C.M. 1947, 23-47-126; amd. Sec. 1, Ch. 561, L. 1981; amd. Sec. 99, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Warning notice to be posted at polling place, 13-13-113.
Violation as misdemeanor, 13-35-103.
Threats and improper influence in political matters, 45-7-102.

13-35-219. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-127 by Sec. 27, Ch. 334, L. 1977; R.C.M. 1947, 23-47-127.

13-35-220. Bribing members of political gatherings. (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 45-7-101(3).

History: En. 23-47-128 by Sec. 28, Ch. 334, L. 1977; R.C.M. 1947, 23-47-128.

Cross-References

Definition of bribe, 1-1-207.

13-35-221. Improper nominations. (1) A person may not pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing the other person to be or to refrain from or to cease being a candidate, and a person may not solicit or receive any payment or promise from another for that purpose.

(2) A person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may not:

(a) be nominated or refuse to be nominated as a candidate at an election;

(b) become, individually or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if the person has been nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person on the ballot as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have the person's name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) the person's candidacy for the nomination is not in good faith.

History: En. 23-47-129 by Sec. 29, Ch. 334, L. 1977; R.C.M. 1947, 23-47-129; amd. Sec. 100, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Violation as misdemeanor, 13-35-103.

13-35-222. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-130 by Sec. 30, Ch. 334, L. 1977; R.C.M. 1947, 23-47-130.

13-35-223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-131 by Sec. 31, Ch. 334, L. 1977; R.C.M. 1947, 23-47-131.

13-35-224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-132 by Sec. 32, Ch. 334, L. 1977; R.C.M. 1947, 23-47-132.

13-35-225. Election materials not to be anonymous — statement of accuracy. (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution.

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 5 days of the discovery or notification;

(b) bring the material into compliance with subsections (1) through (3); and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

History: En. 23-47-133 by Sec. 33, Ch. 334, L. 1977; R.C.M. 1947, 23-47-133; amd. Sec. 221, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1987; amd. Sec. 1, Ch. 23, L. 1991; amd. Sec. 1, Ch. 482, L. 1991; amd. Sec. 1, Ch. 415, L. 2003; amd. Sec. 1, Ch. 419, L. 2003.

Cross-References

Violation as misdemeanor, 13-35-103.

Liability in civil action for violation, 13-37-128.

13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

(5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125.

History: En. 23-47-134 by Sec. 34, Ch. 334, L. 1977; R.C.M. 1947, 23-47-134; amd. Sec. 222, Ch. 571, L. 1979; amd. Sec. 1, Ch. 655, L. 1983; amd. Sec. 13, Ch. 562, L. 1995; amd. Sec. 3, Ch. 401, L. 2001; amd. Sec. 18, Ch. 114, L. 2003; amd. Sec. 2, Ch. 437, L. 2005.

13-35-227. Prohibited contributions from corporations. (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

History: En. Sec. 25, Init. Act, Nov. 1912; re-en. Sec. 10790, R.C.M. 1921; re-en. Sec. 10790, R.C.M. 1935; Sec. 94-1444, R.C.M. 1947; redes. 23-4744 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 1, Ch. 296, L. 1975; R.C.M. 1947, 23-4744; amd. Sec. 1, Ch. 404, L. 1979; amd. Sec. 1, I.M. No. 125, Nov. 5, 1996; amd. Sec. 1, Ch. 294, L. 1997 (voided by I.R. No. 114, Nov. 3, 1998); amd. Sec. 1, Ch. 59, L. 2003.

Cross-References

Limitations on contributions, 13-37-216.

Limitations on receipts from political committees, 13-37-218.

13-35-228. Prohibition of salary increase contribution. A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

History: **En. 23-47-135 by Sec. 35, Ch. 334, L. 1977; R.C.M. 1947, 23-47-135.**

Cross-References

Violation as misdemeanor, 13-35-103.
Civil liability for violation, 13-37-128.

13-35-229. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. 23-47-136 by Sec. 36, Ch. 334, L. 1977; R.C.M. 1947, 23-47-136.**

13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. 23-47-137 by Sec. 37, Ch. 334, L. 1977; R.C.M. 1947, 23-47-137.**

13-35-231. Unlawful for political party to endorse judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.

History: **En. 23-47-138 by Sec. 38, Ch. 334, L. 1977; R.C.M. 1947, 23-47-138; amd. Sec. 223, Ch. 571, L. 1979.**

Cross-References

Election of Supreme Court Justices, 3-2-101, 3-2-102.
Election of District Court Judges, 3-5-201, 3-5-202.
Election of Justice of the Peace, 3-10-201.
Violation as misdemeanor, 13-35-103.

13-35-232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. 23-47-139 by Sec. 39, Ch. 334, L. 1977; R.C.M. 1947, 23-47-139.**

13-35-233. Repealed. Sec. 2, Ch. 352, L. 1999.

History: **En. Sec. 1, Ch. 539, L. 1979.**

13-35-234. Repealed. Sec. 18, Ch. 401, L. 2001.

History: **En. Sec. 2, Ch. 539, L. 1979; amd. Sec. 1, Ch. 545, L. 1983.**

13-35-235. Incorrect election procedures information. (1) A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information has been officially disseminated by an election administrator.

(2) A person who violates this section is guilty of a misdemeanor.

History: **En. Sec. 1, Ch. 397, L. 1989.**

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-236. Void. I.R. No. 114, Nov. 3, 1998.

History: **En. Sec. 2, Ch. 294, L. 1997; voided by I.R. No. 114, Nov. 3, 1998.**

13-35-237 through 13-35-239 reserved.

13-35-240. Voluntary filing of broadcast campaign materials — affidavit — penalty. (1) (a) A political committee not organized by or on behalf of a candidate may file with the commissioner of political practices a copy of a campaign script intended for broadcast advertising.

(b) The committee's authorized agent may sign an affidavit swearing that the content of the script is true and verifiable and may file supporting documentation.

(2) (a) Scripts and affidavits must be filed in the manner prescribed by the commissioner of political practices.

(b) The commissioner of political practices shall file the scripts, affidavits, and any documentation in a manner that allows for them to be readily inspected.

(3) (a) Any person who believes that the content of a script filed pursuant to this section is either untrue or unverifiable may bring the matter to the attention of the county attorney of the county in which the person is a resident.

(b) The county attorney may investigate the alleged falsification or unverifiability of the script and, if the county attorney determines that sufficient evidence exists to justify a criminal prosecution, shall file a cause of action.

(c) An allegation of violation of subsection (1) may not be filed with, investigated by, or prosecuted by the commissioner of political practices.

(4) A person filing an affidavit under this section is subject to the penalty for false swearing under 45-7-202, except that the fine may not exceed $5,000.

History: **En. Sec. 1, Ch. 407, L. 2007.**

Part 3
Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and my opponent's party that merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or my opposition's personal or family life.

I will not use campaign material of any sort that misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations that aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice that tends to corrupt or undermine our American system of free elections or that hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group that resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: **En. Sec. 1, Ch. 475, L. 1979; amd. Sec. 101, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Rules of conduct for public officers, legislators, and public employees, 2-2-104.

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code. (1) The commissioner of political practices shall prepare a form that sets forth the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) The commissioner shall send a copy of the form to each candidate required to file reports or other information with the commissioner. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form must be sent for each election as soon as feasible. The signed form must be returned to the commissioner.

(3) Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner and may sign the form and deliver it to the commissioner.

History: **En. Sec. 2, Ch. 475, L. 1979; amd. Sec. 1, Ch. 128, L. 1993.**

Part 4
Clean Campaign Act

13-35-401. Short title. This part may be referred to as the "Clean Campaign Act".

History: **En. Sec. 1, Ch. 508, L. 2007.**

13-35-402. Fair notice period before election — definition. (1) A candidate, a political committee that has filed a certification under 13-37-201, and an independent political committee shall at the time specified in subsection (3) of this section provide to candidates listed in subsection (2) of this section any final copy of campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the 10 days prior to an election unless:

(a) identical material was already published or broadcast; or

(b) the material does not identify or mention the opposing candidate.

(2) The material must be provided to all other candidates who have filed for the same office and who are individually identified or mentioned in the advertising, except candidates mentioned in the context of endorsements.

(3) Final copies of material described in subsection (1) must be provided to the candidates listed in subsection (2) at the following times:

(a) at the time the material is published or broadcast or disseminated to the public;

(b) if the material is disseminated by direct mail, on the date of the postmark; or

(c) if the material is prepared and disseminated by hand, on the day the material is first being made available to the general public.

(4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast.

(5) For the purposes of this section, an "independent political committee" is a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or a candidate's committee in conjunction with the making of expenditures or accepting contributions.

History: En. Sec. 2, Ch. 508, L. 2007.

13-35-403. Penalties. A person who violates 13-35-402 is liable in a civil action pursuant to 13-37-128.

History: En. Sec. 3, Ch. 508, L. 2007.

CHAPTER 36
CONTESTS

Part 1 — General Provisions

13-36-101. Grounds for contest of nomination or election to public office.
13-36-102. Time for commencing contest.
13-36-103. Court having jurisdiction of proceedings.
13-36-104. Nomination contests.

Part 2 — Procedure

13-36-201. Contents of contest petition.
13-36-202. Reception of illegal votes — allegations and evidence.
13-36-203. Form of complaint.
13-36-204. Bond required.
13-36-205. Recovery of costs.
13-36-206. Notice of filing — prompt hearing.
13-36-207. Hearing of contest.
13-36-208. Advancement of cases — dismissal — privileges of witnesses.
13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate.
13-36-210. Punishment.
13-36-211. When nomination or election not to be vacated.
13-36-212. Declaration of result of election after rejection of illegal votes.

Chapter Cross-References

Salaries withheld during election contests, 2-16-202.

Role and duties of County Clerk and Recorder, 7-4-2611.

Challenges to local government bond elections, 7-7-105.

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Part 1
General Provisions

13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote if the elector believes that:

(1) a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred;

(2) the person was not, at the time of the election, eligible to be a candidate for the office;

(3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner.

History: En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R.C.M. 1921; re-en. Sec. 10810, R.C.M. 1935; Sec. 94-1464, R.C.M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977; R.C.M. 1947, 23-4763; amd. Sec. 224, Ch. 571, L. 1979; amd. Sec. 102, Ch. 56, L. 2009.

Compiler's Comments

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Cross-References

Definition of elector and public office, 13-1-101.

Ineligibility to hold office because of conviction, 13-35-106.

When nomination or election not to be vacated, 13-36-211.

13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination the person intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice must state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside the election or to remove from or deprive any person of an office of which the person is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which the offense was committed.

History: (1)En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; Sec. 23-3316, R.C.M. 1947; (2)En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R.C.M. 1921; re-en. Sec. 10805, R.C.M. 1935; Sec. 94-1459, R.C.M. 1947; redes. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 365, L. 1977; Sec. 23-4759, R.C.M. 1947; R.C.M. 1947, 23-3316(1) thru (3), 23-4759; amd. Sec. 225, Ch. 571, L. 1979; amd. Sec. 58, Ch. 575, L. 1981; amd. Sec. 103, Ch. 56, L. 2009.

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Cross-References

Certification of nomination or election, 13-15-406, 13-15-507.

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of the person's office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of the person's nomination as a candidate for the office to which the person is declared nominated or elected is filed or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R.C.M. 1921; re-en. Sec. 10806, R.C.M. 1935; Sec. 94-1460, R.C.M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977; R.C.M. 1947, 23-4760; amd. Sec. 226, Ch. 571, L. 1979; amd. Sec. 104, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying the judgment into effect. The order of the judge must express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate is conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; R.C.M. 1947, 23-3316(4) thru (6); amd. Sec. 105, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 2
Procedure

13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election must set forth the name of every person whose election is contested and the grounds of the contest. The petition may not be amended unless the amendment is authorized by a court.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 106, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Grounds for contest, 13-36-101.

13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested that, if taken from the candidate, will reduce the number of the candidate's legal votes below the number of legal votes given to some other candidate for the same office. Testimony may not be received of any illegal votes unless the party contesting the election delivers to the opposite party, at least 3 days before trial, a written list of the number of illegal votes and by whom given that the party intends to prove at trial. This provision may not prevent the contestant from offering evidence of illegal votes not included in the statement if the contestant did not know and by reasonable diligence was unable to learn of the additional illegal votes and by whom they were given before delivering the written list.

History: En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R.C.M. 1921; re-en. Sec. 10812, R.C.M. 1935; Sec. 94-1466, R.C.M. 1947; redes. 23-4765 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4765; amd. Sec. 227, Ch. 571, L. 1979; amd. Sec. 107, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-36-203. Form of complaint. (1) A petition or complaint filed under the provisions of this chapter is sufficient if it is in substantially the following form:

In the District Court of the

.... Judicial District,

for the County of ...., State of Montana.

A B (or A B and C D), Contestants,
vs.
E F, Contestee.

The petition of the contestant (or contestants) named above alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., 20..., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at the election and the board of canvassers has returned .... as being nominated (or elected) at the election.

That contestant A B voted (or had a right to vote, as the case may be) at the election (or claims to have had a right to be returned as the nominee or officer elected or nominated at the election or was a candidate at the election, as the case may be) and that contestant C D (here state in a similar manner the right of each contestant).

The contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

The contestants ask that it be determined by the court that.... was not nominated (or elected) and that the election was void or that A B or C D, as the case may be, was nominated (or elected) and ask for other relief that the court may find appropriate.

(2) The complaint must be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

History: En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R.C.M. 1921; re-en. Sec. 10818, R.C.M. 1935; Sec. 94-1472, R.C.M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4771; amd. Sec. 23, Ch. 51, L. 1999.

Cross-References

Verification of pleadings, 25-4-203.

13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in a sum that the court may order, not exceeding $2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney fees that may be awarded against the petitioner if the petitioner does not prevail.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 108, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-36-205. Recovery of costs. In any contest, the prevailing party may recover the party's costs, disbursements, and reasonable attorney fees. Costs, disbursements, and attorney fees in all cases must be in the discretion of the court. If judgment is rendered against the petitioner, it must also be rendered against the sureties on the bond.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 228, Ch. 571, L. 1979; amd. Sec. 109, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Costs, Title 25, ch. 10.

13-36-206. Notice of filing — prompt hearing. On the filing of a petition under this part, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing the person to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear the cause, and the contest must take precedence over all other business on the court docket and must be tried and disposed of with all convenient dispatch. The court is always considered to be in session for the trial of contest cases.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 110, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on the petition and no person other than the parties and their attorneys may be heard except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney fees between the parties and shall finally determine all questions of law and fact, except that the judge may impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall issue certificates of nomination or election to the person or persons entitled to the certificates by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office must be declared vacant by the judgment, except as provided in 13-36-212, and must be filled by a new election or by appointment as may be provided by law regarding vacancies in the nomination or office.

History: **En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R.C.M. 1921; re-en. Sec. 10814, R.C.M. 1935; Sec. 94-1468, R.C.M. 1947; redes. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977; R.C.M. 1947, 23-4767; amd. Sec. 229, Ch. 571, L. 1979; amd. Sec. 111, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.
Vacancies in local government offices, 7-4-2206.
Vacancy after primary and prior to general election, 13-10-327.

13-36-208. Advancement of cases — dismissal — privileges of witnesses. Proceedings under this title must be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of a continuance or postponement, the court may impose costs in its discretion as a condition of the continuance or postponement. A petition may not be dismissed without the consent of the county attorney unless the the petition is dismissed by the court. A person may not be excused from testifying or producing papers or documents on the ground that the person's testimony or the production of papers or documents will tend to incriminate the person. However, an admission, evidence, or paper made or advanced or produced by the person or any evidence that is the direct result of the evidence or information that the person may have given may not be offered or used against the person in any civil or criminal prosecution except in a prosecution for perjury committed in the testimony.

History: **En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R.C.M. 1921; re-en. Sec. 10817, R.C.M. 1935; Sec. 94-1471, R.C.M. 1947; redes. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977; R.C.M. 1947, 23-4770; amd. Sec. 112, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate. Upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside a nomination or election or to remove a person from office, the nomination or election of the candidate is not by reason of the offense or omission complained of void and the candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be unjust that the candidate forfeit a nomination or office or be deprived of any office of which the candidate is the incumbent. The decision of the court must be based upon the following:

(1) it appears from the evidence that the offense complained of was not committed by the candidate or with the candidate's knowledge or consent or was committed without the candidate's sanction or connivance and that all reasonable means for preventing the commission of the offense at the election were taken by and on behalf of the candidate;

(2) the offense or offenses complained of were trivial, unimportant, and limited in character and in all other respects the candidate's participation in the election was free from offenses or illegal acts; or

(3) any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any lack of good faith.

History: **En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R.C.M. 1921; re-en. Sec. 10803, R.C.M. 1935; Sec. 94-1457, R.C.M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977; R.C.M. 1947, 23-4757; amd. Sec. 113, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside the election or to remove any person from office, it appears that the person was guilty of any corrupt practice, illegal act, or undue influence in or about the nomination or election, the person must be punished by being deprived of the nomination or office and the vacancy must be filled in the manner provided by law. The only exceptions to this judgment are those provided in 13-36-209. The judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any act or acts.

History: En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R.C.M. 1921; re-en. Sec. 10804, R.C.M. 1935; Sec. 94-1458, R.C.M. 1947; redes. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977; R.C.M. 1947, 23-4758; amd. Sec. 114, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.
Vacancies in local government offices, 7-4-2206.
Vacancy after primary and prior to general election, 13-10-327.

13-36-211. When nomination or election not to be vacated. The ground of contest specified in 13-36-101(3) may not be construed to authorize a nomination or election to be set aside on account of illegal votes unless it appears:

(1) that the candidate or nominee whose right is contested had knowledge of or connived in the illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from the person, would reduce the number of legal votes for the person below the number of votes given to some other person for the same nomination or office, after deducting the illegal votes that may be shown to have been given to the other person.

History: En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R.C.M. 1921; re-en. Sec. 10811, R.C.M. 1935; Sec. 94-1465, R.C.M. 1947; redes. 23-4764 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4764; amd. Sec. 115, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-36-212. Declaration of result of election after rejection of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

History: En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R.C.M. 1921; re-en. Sec. 10809, R.C.M. 1935; Sec. 94-1463, R.C.M. 1947; redes. 23-4762 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4762.

CHAPTER 37
CONTROL OF CAMPAIGN PRACTICES

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Chapter Cross-References

Standards of conduct, Title 2, ch. 2.
Elected official's business disclosure statement, 2-2-106.
Role and duties of County Clerk and Recorder, 7-4-2611.
Definitions applicable to this chapter, 13-1-101.
Code of fair campaign practices, Title 13, ch. 35, part 3.
Political contributions of insurers prohibited, 33-18-305.
Limitation on political activities of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1
Commissioner of Political Practices

13-37-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of political practices created by 13-37-102.

(2) "Public office" has the meaning provided in 13-1-101.

(3) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.

(4) "Relative" means a family member who is within the second degree of consanguinity or affinity to the commissioner.

History: **En. 23-4796 by Sec. 3, Ch. 365, L. 1977; R.C.M. 1947, 23-4796; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 4, Ch. 479, L. 2005.**

13-37-102. Creation of office — removal. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee composed of the speaker of the house, the president of the senate, and the minority leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for the governor's consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The governor's decision to remove the commissioner must be stated in writing, and the sufficiency of the governor's stated causes for removing the commissioner is subject to judicial review.

History: **En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(1), (5); amd. Sec. 1, Ch. 483, L. 1979; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 5, Ch. 479, L. 2005; amd. Sec. 16, Ch. 4, Sp. L. May 2007.**

Cross-References

Office of Commissioner attached to Office of Secretary of State for administrative purposes, 2-15-411.

13-37-103. Term of office. Subject to the provisions of 13-37-104, the individual selected to serve as commissioner is appointed for a 6-year term and may not be reappointed to serve as commissioner.

History: **En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(2); amd. Sec. 2, Ch. 483, L. 1979; amd. Sec. 6, Ch. 479, L. 2005.**

13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the position of commissioner, a successor must be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Each nomination must be confirmed by the senate, but a nomination made while the senate is not in session is effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1).

History: **En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(3); amd. Sec. 4, Ch. 483, L. 1979; amd. Sec. 116, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-37-105. Impeachment and prosecution of commissioner. The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. The commissioner may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

History: **En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(4); amd. Sec. 117, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-37-106. Salary. (1) The commissioner of political practices is entitled to receive a salary within the pay band, as defined in 2-18-101, determined by the department of administration as provided in subsection (4).

(2) The commissioner is also entitled to longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18.

(3) The salary of the commissioner may not be reduced during the term for which the commissioner is appointed.

(4) The department of administration shall determine the appropriate occupation and pay band for the commissioner of political practices in the same manner that it determines the occupation and pay band for employees in state government pursuant to Title 2, chapter 18.

(5) The governor shall set the salary of the commissioner of political practices within the pay band established by the department of administration.

(6) The commissioner of political practices must receive pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304.

History: En. Sec. 3, Ch. 483, L. 1979; amd. Sec. 4, Ch. 605, L. 1981; amd. Sec. 3, Ch. 656, L. 1983; amd. Sec. 1, Ch. 236, L. 1985; amd. Sec. 4, Ch. 693, L. 1985; amd. Sec. 12, Ch. 660, L. 1989; amd. Sec. 14, Ch. 720, L. 1991; amd. Sec. 52, Ch. 42, L. 1997; amd. Sec. 16, Ch. 417, L. 1997; amd. Sec. 18, Ch. 81, L. 2007; amd. Sec. 7, Ch. 7, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 7 in (1), in (4) in two places, and in (5) substituted "pay band" for "occupational pay range". Amendment effective July 1, 2009.

13-37-107. Commissioner of political practices — qualifications. The individual appointed to serve as commissioner:

(1) must be a citizen of the United States and a resident of Montana as provided in 13-1-112; and

(2) on the date of appointment, must be registered to vote in Montana.

History: En. Sec. 1, Ch. 479, L. 2005.

13-37-108. Commissioner of political practices — restrictions. During the commissioner's term of office, the commissioner may not knowingly, as defined in 45-2-101:

(1) hold another position of public trust or engage in any other occupation or business if the position of public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing the duties of the commissioner's office;

(2) participate in any political activity or in a political campaign;

(3) make a contribution to a candidate or political committee or for or against a ballot issue or engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;

(4) attend an event that is held for the purpose of raising funds for or against a candidate, political committee, or ballot issue;

(5) participate in a matter pertaining to the commissioner's office that:

(a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest pursuant to Title 2, chapter 2; or

(b) involves a relative of the commissioner.

History: En. Sec. 2, Ch. 479, L. 2005.

13-37-109 and 13-37-110 reserved.

13-37-111. Investigative powers and duties — recusal. (1) Except as provided in 13-35-240, the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

(b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; and

(c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy, subject to subsection (4)(b).

(b) The deputy:

(i) may not be an employee of the office of the commissioner;

(ii) must have the same qualifications as specified for the commissioner in 13-37-107;

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

(5) The appointment of the deputy is effectuated by a contract between the commissioner and the deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(1), (13), (17), (21); amd. Sec. 230, Ch. 571, L. 1979; amd. Sec. 4, Ch. 401, L. 2001; amd. Sec. 7, Ch. 479, L. 2005; amd. Sec. 2, Ch. 407, L. 2007.

13-37-112. Personnel and budget. (1) The commissioner shall select an appropriate staff to enforce the provisions of chapter 35 of this title and this chapter, and may hire and fire all personnel under the commissioner's supervision.

(2) The commissioner is responsible for preparing, administering, and allocating the budget for the office.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(2), (16); amd. Sec. 231, Ch. 571, L. 1979; amd. Sec. 5, Ch. 401, L. 2001.

Cross-References

Office of Commissioner attached to Office of Secretary of State for administrative purposes, 2-15-411.

Role of Commissioner of Political Practices in regulation of lobbying, Title 5, ch. 7.

13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-35-240, 13-37-124, and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapter 35 of this title or this chapter;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of this title or this chapter are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapter 35 of this title or this chapter; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this title or this chapter.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(3); amd. Sec. 232, Ch. 571, L. 1979; amd. Sec. 6, Ch. 401, L. 2001; amd. Sec. 3, Ch. 407, L. 2007.

Cross-References

Consultation with County Attorney, 13-37-124.

Powers of County Attorney to investigate, 13-37-125.

13-37-114. Rules. The commissioner shall adopt rules to carry out the provisions of chapter 35 of this title and this chapter in conformance with the Montana Administrative Procedure Act.

History: **En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(14); amd. Sec. 233, Ch. 571, L. 1979; amd. Sec. 7, Ch. 401, L. 2001.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

13-37-115. Orders of noncompliance. The commissioner may issue orders of noncompliance as prescribed by 13-37-121.

History: **En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(18).**

13-37-116. Exercise of powers. The commissioner may exercise all of the powers conferred upon the commissioner by law in any jurisdiction or political subdivision of the state.

History: **En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(19); amd. Sec. 118, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-37-117. Commissioner to provide forms, manuals, and election laws. (1) The commissioner shall prescribe forms for reports and other information required to be filed pursuant to chapter 35 and this chapter and provide forms and appropriate information to persons required to file reports and other information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35 or this chapter.

(3) The commissioner shall provide copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35 or this chapter.

(4) The commissioner shall provide copies of forms, manuals, and election laws referred to in this section electronically. Upon request, the commissioner shall provide paper copies.

History: **En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(4), (5), (7); amd. Sec. 234, Ch. 571, L. 1979; amd. Sec. 2, Ch. 113, L. 1993; amd. Sec. 8, Ch. 401, L. 2001; amd. Sec. 1, Ch. 109, L. 2003.**

13-37-118. Information voluntarily supplied. The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of chapter 35 of this title or this chapter.

History: **En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(6); amd. Sec. 235, Ch. 571, L. 1979; amd. Sec. 9, Ch. 401, L. 2001.**

13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with the commissioner's office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed the actual cost.

(2) The commissioner shall preserve statements and other information filed with the commissioner's office for a period of 10 years from the date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and other reports that the commissioner considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports.

History: **(1) thru (4)En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; Sec. 23-4786, R.C.M. 1947; (Former (5))En. 23-4789 by Sec. 14, Ch. 480, L. 1975; Sec. 23-4789, R.C.M. 1947; R.C.M. 1947, 23-4786(8) through (12), 23-4789; amd. Sec. 236, Ch. 571, L. 1979; amd. Sec. 119, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-37-120. Reports. The commissioner may report as necessary on the matters within the commissioner's jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable.

History: **En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(15), (20); amd. Sec. 237, Ch. 571, L. 1979; amd. Sec. 17, Ch. 349, L. 1993.**

13-37-121. Inspection of statements and reports — issuance of orders of noncompliance. (1) Each statement and report filed with the commissioner during an election or within 60 days after the election must be inspected within 20 days after the statement or report is filed. Intermediate Saturdays, Sundays, and holidays must be excluded in the computation of time under this section. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. Notification by the commissioner may be accomplished by written or electronic communication or by telephone. If the person fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this section.

(2) An order of noncompliance may be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed by a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

(3) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(4) If an order of noncompliance is issued during any period other than that described in subsection (3), a candidate or political committee shall submit the necessary information within 10 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter.

History: **En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(1) thru (3); amd. Sec. 238, Ch. 571, L. 1979; amd. Sec. 1, Ch. 410, L. 1995; amd. Sec. 10, Ch. 401, L. 2001.**

Cross-References

Authority to issue order of noncompliance, 13-37-115.

13-37-122. Judicial review of orders of noncompliance. A candidate or political treasurer who is the subject of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section must be expeditiously reviewed by the appropriate district court.

History: **En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(4); amd. Sec. 120, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-37-123. Examination of reports after election. Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of this chapter to determine whether the statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of this chapter. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this chapter or the alleged failure to report any contribution or expenditure required to be reported pursuant to this chapter.

History: **En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(5); amd. Sec. 239, Ch. 571, L. 1979.**

13-37-124. Consultation and cooperation with county attorney. (1) Except as provided in 13-35-240, whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapter 35 of this title or this chapter.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(1) thru (4); amd. Sec. 240, Ch. 571, L. 1979; amd. Sec. 7, Ch. 557, L. 1987; amd. Sec. 11, Ch. 401, L. 2001; amd. Sec. 4, Ch. 407, L. 2007.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

13-37-125. Powers of county attorney to investigate. (1) Nothing in chapter 35 of this title or this chapter prevents a county attorney from inspecting any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(5), (6); amd. Sec. 241, Ch. 571, L. 1979; amd. Sec. 12, Ch. 401, L. 2001; amd. Sec. 121, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-37-126. Names not to appear on ballot. (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name may not appear on the official ballot.

(b) The commissioner shall provide the notification:

(i) within 8 calendar days after the close of the certification deadline provided in 13-10-208(1) for primary elections held pursuant to 13-1-107(1); or

(ii) by the earliest date specified under 13-10-208(2) for the county election administrator to certify the ballot for primary elections held pursuant to 13-1-107(2) or (3); and

(iii) by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections.

History: En. 23-4791 by Sec. 16, Ch. 480, L. 1975; R.C.M. 1947, 23-4791; amd. Sec. 242, Ch. 571, L. 1979; amd. Sec. 1, Ch. 25, L. 1997; amd. Sec. 13, Ch. 401, L. 2001; amd. Sec. 86, Ch. 414, L. 2003; amd. Sec. 15, Ch. 292, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 292 in (3)(a) near end substituted "may not" for "should not"; in (3)(b) and (3)(b)(i) substituted requirements for notification for "The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections"; inserted (3)(b)(ii) concerning earliest date; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancy prior to primary election, 13-10-326.
Vacancy after primary and prior to general election, 13-10-327.

13-37-127. Withholding of certificates of nomination or election. (1) A certificate of election may not be granted to any candidate until the candidate or the candidate's treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. A candidate for an elective office may not assume the powers and duties of that office until the candidate has received a certificate of election as provided by law. A certificate of election may only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or the candidate's treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued.

History: En. 23-4792 by Sec. 17, Ch. 480, L. 1975; R.C.M. 1947, 23-4792; amd. Sec. 243, Ch. 571, L. 1979; amd. Sec. 14, Ch. 401, L. 2001.

Cross-References

Certificates issued by Election Administrator, 13-15-406.
Governor to issue commissions, 13-15-504.

13-37-128. Cause of action created. (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) A person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

History: En. Sec. 244, Ch. 571, L. 1979; amd. Sec. 53, Ch. 42, L. 1997; amd. Sec. 15, Ch. 401, L. 2001; amd. Sec. 4, Ch. 508, L. 2007.

13-37-129. Liability and disposition of fines. In determining the amount of liability under 13-37-128, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney in a court other than a justice's court, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner in a court other than a justice's court, the entire amount recovered shall be paid to the general fund of the state.

History: En. Sec. 245, Ch. 571, L. 1979; amd. Sec. 8, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

13-37-130. Limitation of action. An action may not be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts that give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36.

History: En. Sec. 246, Ch. 571, L. 1979; amd. Sec. 54, Ch. 42, L. 1997.

13-37-131. Misrepresentation of voting record — political civil libel. (1) It is unlawful for a person to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to $1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

History: En. Sec. 1, Ch. 483, L. 1995; amd. Sec. 1, Ch. 352, L. 1999.

Part 2
Campaign Finance

Part Cross-References

Civil penalties for violation of chapter, 13-37-128.

13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which must include an organizational statement and the name and address of all officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee must be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(1); amd. Sec. 247, Ch. 571, L. 1979; amd. Sec. 23, Ch. 591, L. 1991; amd. Sec. 122, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Naming and labeling of political committees, 13-37-210.

13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the presiding officer of the political committee, in the case of a political committee. The written authorization must be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(2), (4); amd. Sec. 248, Ch. 571, L. 1979; amd. Sec. 123, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Definition of candidate and political committee, 13-1-101.

13-37-203. Qualifications of campaign and deputy campaign treasurers. Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 must be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may serve as the candidate's own campaign or deputy campaign treasurer. An individual may not serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until the individual has been designated and the individual's name certified by the candidate or political committee.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(3); amd. Sec. 124, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Registered voter, Title 13, ch. 2.

13-37-204. Removal of campaign and deputy campaign treasurers. A candidate or political committee may remove the candidate's or committee's campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer must immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of the candidate's or committee's campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(5); amd. Sec. 125, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each designated primary and secondary depository at the same time and with the same officer with whom the candidate or committee files the name of the candidate's or committee's campaign treasurer pursuant to 13-37-201. This section does not prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize the candidate's regular or personal account in the depository as a campaign account.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(6); amd. Sec. 249, Ch. 571, L. 1979; amd. Sec. 1, Ch. 98, L. 1981; amd. Sec. 126, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political campaigns, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates, their political campaigns, and political committees organized to support or oppose an issue if the candidate is running for or the committee's issue involves a unit of local government authorized by law to perform a single function or a limited number of functions, including but not limited to a conservation district, a weed management district, a fire district, a community college district, a

hospital district, an irrigation district, a sewer district, a transportation district, a water district, or any district or other entity formed by interlocal agreement.

History: **En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(7); amd. Sec. 250, Ch. 571, L. 1979; amd. Sec. 1, Ch. 361, L. 1991; amd. Sec. 1, Ch. 191, L. 2003; amd. Sec. 127, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-37-207. Deposit of contributions — statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee must be deposited prior to the end of the fifth business day following their receipt, Sundays and holidays excluded, in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited must be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit must be kept by the treasurer as a part of the treasurer's records.

History: **En. 23-4782 by Sec. 7, Ch. 480, L. 1975; R.C.M. 1947, 23-4782; amd. Sec. 2, Ch. 98, L. 1981; amd. Sec. 128, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-37-208. Treasurer to keep records. (1) (a) Except as provided in subsection (1)(b), the campaign treasurer of each candidate and each political committee shall keep detailed accounts of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter. The accounts must be current within not more than 10 days after the date of receiving a contribution or making an expenditure.

(b) The accounts described in subsection (1)(a) must be current as of the 5th day before the date of filing of a report as specified in 13-37-226.

(2) Accounts of a deputy campaign treasurer must be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee must be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: **En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(1), (3); amd. Sec 251, Ch. 571, L. 1979; amd. Sec. 129, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-37-209. Inspection of records. Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

History: **En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(2).**

13-37-210. Naming and labeling of political committees. (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot issue by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot issue as a part of the media advertisement or other paid public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128.

History: **En. Sec. 1, Ch. 225, L. 1985; amd. Sec. 24, Ch. 481, L. 2007.**

13-37-211 through 13-37-214 reserved.

13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), $100 per week; and

(b) for all other candidates and political committees, $25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, postage stamps, and other necessities in an amount of less than $25. Petty cash may not be used for the purchase of time, space, or services from any communications medium.

History: **En. 23-4784 by Sec. 9, Ch. 480, L. 1975; R.C.M. 1947, 23-4784; amd. Sec. 252, Ch. 571, L. 1979; amd. Sec. 1, Ch. 21, L. 1987; amd. Sec. 130, Ch. 56, L. 2009.**

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

13-37-216. Limitations on contributions — adjustment. (1) (a) Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $250;

(iii) for a candidate for any other public office, not to exceed $130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4), from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $6,500;

(c) for a candidate for public service commissioner, not to exceed $2,600;

(d) for a candidate for the state senate, not to exceed $1,050;

(e) for a candidate for any other public office, not to exceed $650.

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2002.

(b) The resulting figure must be rounded up or down to the nearest:

(i) $10 increment for the limits established in subsection (1); and

(ii) $50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

(5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(6) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.

History: En. 23-4795 by Sec. 1, Ch. 481, L. 1975; amd. Sec. 67, Ch. 365, L. 1977; R.C.M. 1947, 23-4795; amd. Sec. 253, Ch. 571, L. 1979; amd. Sec. 1, I.M. No. 118, approved Nov. 8, 1994; amd. Sec. 1, Ch. 462, L. 2003; amd. Sec. 1, Ch. 328, L. 2007; amd. Sec. 1, Ch. 94, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 94 in (4)(a) near middle after "price index for" substituted "June of the year prior to the year in which a general" for "January of the year in which an" and at end substituted "June 2002" for "January 2003". Amendment effective October 1, 2009.

Cross-References

Definition of contribution, 13-1-101.
Corporations prohibited from making contributions, 13-35-227.
Limitations on receipts from political committees, 13-37-218.

13-37-217. Contributions in name of undisclosed principal. A person may not make a contribution of the person's own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies the money. A person may not knowingly receive a contribution or enter or cause the contribution to be entered in the person's accounts or records in another name than that of the person by whom it was actually furnished.

History: En. Sec. 18, Init. Act, Nov. 1912; re-en. Sec. 10783, R.C.M. 1921; re-en. Sec. 10783, R.C.M. 1935; Sec. 94-1437, R.C.M. 1947; redes. 23-4737 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 54, Ch. 365, L. 1977; R.C.M. 1947, 23-4737; amd. Sec. 254, Ch. 571, L. 1979; amd. Sec. 131, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Corporations prohibited from making contributions, 13-35-227.

13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than $2,150 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than $1,300 in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest $50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

History: En. Sec. 1, Ch. 529, L. 1983; amd. Sec. 19, Ch. 634, L. 1993 (voided by I.R. No. 112, Nov. 8, 1994); amd. Sec. 2, I.M. No. 118, approved Nov. 8, 1994; amd. Sec. 1, Ch. 143, L. 2001; amd. Sec. 2, Ch. 462, L. 2003.

Cross-References

Definition of contribution, 13-1-101.
Limitations on contributions, 13-27-216.
Corporations prohibited from making contributions, 13-35-227.

13-37-219 through 13-37-224 reserved.

13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports must be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(1), (2); amd. Sec. 255, Ch. 571, L. 1979; amd. Sec. 24, Ch. 591, L. 1991; amd. Sec. 132, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Rules of conduct for public officers, legislators, and employees, 2-2-104.
Elected officials — financial disclosure statements, 2-2-106.
Definition of contribution and expenditure, 13-1-101.

13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports electronically as follows:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March, April, July, August, and September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election;

(e) not more than 20 days after the date of the election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held;

(b) within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner and the election administrator of the appropriate county pursuant to 13-37-225.

(c) not more than 20 days after the date of the election; and

(d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report within 24 hours of making an expenditure or incurring a debt or obligation of $500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;

(c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section.

History: **En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(3) thru (6); amd. Sec. 256, Ch. 571, L. 1979; amd. Sec. 2, Ch. 339, L. 1989; amd. Sec. 1, Ch. 75, L. 1991; amd. Sec. 20, Ch. 10, L. 1993; amd. Sec. 1, Ch. 208, L. 1993; amd. Sec. 9, Ch. 18, L. 1995; amd. Sec. 1, Ch. 86, L. 1995; amd. Sec. 16, Ch. 401, L. 2001; amd. Sec. 25, Ch. 481, L. 2007; amd. Sec. 1, Ch. 252, L. 2009; amd. Sec. 1, Ch. 274, L. 2009; amd. Sec. 53, Ch. 297, L. 2009.**

Compiler's Comments

2009 Amendments — Composite Section: Chapter 252 in (3)(b) in second sentence changed "may" to "must" and substituted "to the commissioner and the election administrator of the appropriate county pursuant to 13-37-225" for "to the clerk and recorder and the commissioner of political practices"; inserted (5)(b) requiring certain reports within 24 hours; in (7) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 274 in (1) at end inserted "electronically as follows"; in (1)(b) following "March" substituted "April, July, August, and September" for "and September in each year that an election is to be held and on the 15th and"; in (1)(c) at beginning before "5th" inserted "on the 15th and"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 297 in (2)(b) at end inserted "in each year that an election is to be held". Amendment effective October 1, 2009.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

13-37-227. Comprehensive report when several candidates or issues involved. The commissioner shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.

History: **En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(7); amd. Sec. 257, Ch. 571, L. 1979.**

13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee, as defined in 13-1-101, until the fifth day before the date of filing of the appropriate initial report pursuant to 13-37-226(1) through (5). Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5). For the purposes of this subsection, the reports required under 13-37-226(1)(d), (2)(d), (3)(b), and (5)(b) are not periodic reports and must be filed as required by 13-37-226(1)(d), (2)(d), (3)(b), or (5)(b), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign unless the election is a primary election and the candidate or political committee will participate in the general election.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(8); amd. Sec. 258, Ch. 571, L. 1979; amd. Sec. 2, Ch. 75, L. 1991; amd. Sec. 17, Ch. 401, L. 2001; amd. Sec. 26, Ch. 481, L. 2007; amd. Sec. 133, Ch. 56, L. 2009; amd. Sec. 2, Ch. 252, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Chapter 252 in (2) inserted second sentence relating to reports filed under 13-37-226(1)(d), (2)(d), (3)(b), and (5)(b); and made minor changes in style. Amendment effective October 1, 2009.

13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of $35 or more to a candidate or political committee, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events;

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

(4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3);

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

(8) an itemized account of proceeds that total less than $35 from a person from mass collections made at fundraising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

History: En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(1) through (9), (part (16)); amd. Sec. 1, Ch. 36, L. 1987; amd. Sec. 3, Ch. 75, L. 1991; amd. Sec. 3, Ch. 462, L. 2003.

13-37-230. Disclosure of expenditures made. (1) Except as provided in subsection (3), each report required by this chapter must disclose the following information:

(a) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(b) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(c) the total sum of expenditures made by a political committee or candidate during the reporting period;

(d) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(e) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;

(f) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner; and

(g) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

(2) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

(3) A candidate is required to report the information specified in this section only if the transactions involved were undertaken for the purpose of influencing an election.

History: En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(10) through (16); amd. Sec. 1, Ch. 162, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 162 in (1) at beginning of introductory clause inserted exception clause and at end after "information" deleted "except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election"; inserted (2) requiring itemized and detailed expenditure reports; inserted (3) requiring reporting if the transactions were undertaken for the purpose of influencing an election; and made minor changes in style. Amendment effective October 1, 2009.

13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee must be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report must be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee must be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: En. 23-4780 by Sec. 5, Ch. 480, L. 1975; R.C.M. 1947, 23-4780; amd. Sec. 260, Ch. 571, L. 1979; amd. Sec. 134, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Oaths and affirmations, Title 1, ch. 6.

13-37-232 through 13-37-239 reserved.

13-37-240. Surplus campaign funds. (1) A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to 13-37-228. In disposing of the surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. A successful candidate for a statewide elected or legislative office or for public service commissioner may establish a constituent services account as provided in 13-37-402. The candidate shall provide a supplement to the closing campaign report to the commissioner showing the disposition of any surplus campaign funds.

(2) For purposes of this section, "personal benefit" means a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family.

History: En. Sec. 3, I.M. No. 118, approved Nov. 8, 1994; amd. Sec. 3, Ch. 487, L. 2007.

13-37-241 through 13-37-249 reserved.

13-37-250. Voluntary spending limits. (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, _______ is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101, who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $195,000.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $6,500 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner.

(5) After July 1, 2004, all limits on voluntary spending in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which the general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest $50 increment.

History: En. Sec. 2, I.M. No. 125, Nov. 5, 1996; amd. Sec. 3, Ch. 294, L. 1997 (voided by I.R. No. 114, Nov. 3, 1998); amd. Sec. 24, Ch. 51, L. 1999; amd. Sec. 87, Ch. 414, L. 2003; amd. Sec. 4, Ch. 462, L. 2003; amd. Sec. 43, Ch. 475, L. 2003.

Part 3
Public Campaign Finance
(Repealed)

13-37-301. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. 23-4901 by Sec. 1, Ch. 263, L. 1974; amd. Sec. 1, Ch. 538, L. 1977; R.C.M. 1947, 23-4901.

13-37-302. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. 23-4902 by Sec. 2, Ch. 263, L. 1974; amd. Sec. 2, Ch. 538, L. 1977; R.C.M. 1947, 23-4902; amd. Sec. 1, Ch. 579, L. 1979.

13-37-303. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. 23-4903 by Sec. 3, Ch. 263, L. 1974; R.C.M. 1947, 23-4903; amd. Sec. 2, Ch. 579, L. 1979; amd. Sec. 34, Ch. 370, L. 1987.

13-37-304. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. 23-4904 by Sec. 4, Ch. 263, L. 1974; amd. Sec. 3, Ch. 538, L. 1977; R.C.M. 1947, 23-4904; amd. Sec. 3, Ch. 579, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 703, L. 1985; amd. Sec. 2, Ch. 361, L. 1991.

13-37-305. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. 23-4905 by Sec. 5, Ch. 263, L. 1974; R.C.M. 1947, 23-4905; amd. Sec. 3, Ch. 361, L. 1991.

13-37-306. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. 23-4906 by Sec. 6, Ch. 263, L. 1974; amd. Sec. 4, Ch. 538, L. 1977; R.C.M. 1947, 23-4906.

13-37-307. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. Sec. 5, Ch. 579, L. 1979.

13-37-308. Repealed. Sec. 8, Ch. 581, L. 1993.

History: En. Sec. 4, Ch. 579, L. 1979.

Part 4
Miscellaneous Provisions

13-37-401. Definitions. As used in 13-37-402 and this section, the following definitions apply:

(1) "Constituent services" means travel, mailing, and other expenses incurred to represent and serve constituents and authorized in rules adopted by the commissioner to implement the provisions of 13-37-402 and this section.

(2) "Personal benefit" has the meaning provided in 13-37-240.

History: En. Sec. 1, Ch. 487, L. 2007.

13-37-402. Constituent accounts — reports. (1) A constituent services account may be established to pay for constituent services by a successful candidate required to report contributions under 13-37-229 and expenditures under 13-37-230. A constituent services account may be established by filing an appropriate form with the commissioner.

(2) (a) A successful candidate may deposit only surplus campaign funds in a constituent services account.

(b) The money in the account may be used only for constituent services. The money in the account may not be used for personal benefit. Expenditures from a constituent services account may not be made when the holder of the constituent services account also has an open campaign account.

(3) A person described in subsection (1) may not establish any account related to the public official's office other than a constituent services account. This subsection does not prohibit a person from establishing a campaign account.

(4) The holder of a constituent services account shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate reporting contributions under 13-37-229 and expenditures under 13-37-230. The report must be certified as provided in 13-37-231.

(5) The holder of a constituent services account shall close the account within 120 days after the account holder leaves public office.

History: En. Sec. 2, Ch. 487, L. 2007; amd. Sec. 1, Ch. 347, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 347 in (1) near beginning of first sentence following "established" deleted "by a person elected to a statewide or legislative office or as a public service commissioner" and at end inserted "by a successful candidate required to report contributions under 13-37-229 and expenditures under 13-37-230"; in (2)(a) near beginning following "candidate" deleted "for the legislature, a statewide elected office, or the public service commission"; in (3) at beginning of first sentence substituted "person described in subsection (1)" for "statewide elected official, legislator, or public service commissioner" and in second sentence near beginning following "prohibit" substituted "person" for "statewide elected official, legislator, or public service commissioner"; and made minor changes in style. Amendment effective April 24, 2009.

13-37-403. Constituent services account — prior contributions — donation to charity. A person who established a constituent services account prior to May 14, 2007, shall donate any money remaining in the account on April 24, 2009, to charity by July 1, 2009, or deposit the money by July 1, 2009, into a constituent services account established after May 14, 2007, and shall close the old account. The holder of a constituent services account subject to this section shall file a report with the commissioner describing the disposition of the money subject to this section.

History: En. Sec. 2, Ch. 347, L. 2009.

Compiler's Comments

Effective Date: Section 3, Ch. 347, L. 2009, provided that this section is effective April 24, 2009.

Retroactive Applicability: Section 4, Ch. 347, L. 2009, provided: "[Section 2] [13-37-403] applies retroactively, within the meaning of 1-2-109, to money placed in a constituent services account that was established prior to May 14, 2007."

CHAPTER 38
POLITICAL PARTIES

Part 1 — General Provisions

13-38-101. Powers of parties.
13-38-102. Repealed.
13-38-103. Repealed.
13-38-104. Party rules to be filed with secretary of state.
13-38-105. County committee rules to be filed with election administrator.

Part 2 — Committee Structure

13-38-201. Election of committee representatives at primary.
13-38-202. Committee representatives as party representatives — county and city central committees.
13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists.
13-38-204. Committees to fill vacancies among nominees under certain circumstances.
13-38-205. Organization and operation of committee.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.
Nominations by political parties, Title 13, ch. 10, parts 4 through 6.
Unlawful for political parties to endorse judicial candidate, 13-35-231.

Part 1
General Provisions

13-38-101. Powers of parties. Each political party may:

(1) make its own rules;

(2) provide for and select its own offices;

(3) call conventions and provide for the number and qualification of delegates;

(4) adopt platforms;

(5) provide for selection of delegates to national conventions;

(6) provide for the nomination of presidential electors;

(7) provide for the selection of national committee representatives;

(8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where the vacancies are caused by death, resignation, or removal from the electoral district;

(9) perform all other functions inherent in a party organization.

History: En. Sec. 81, Ch. 368, L. 1969; R.C.M. 1947, 23-3406; amd. Sec. 135, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Vacancy after primary and prior to general election, 13-10-327.
Presidential electors, 13-25-101.

13-38-102. Repealed. Sec. 1, Ch. 513, L. 1981.

History: En. Sec. 83, Ch. 368, L. 1969; R.C.M. 1947, 23-3407.

13-38-103. Repealed. Sec. 15, Ch. 363, L. 2001.

History: En. Sec. 17, Ch. 368, L. 1969; amd. Sec. 1, Ch. 257, L. 1971; amd. Sec. 1, Ch. 132, L. 1973; R.C.M. 1947, 23-3001.

13-38-104. Party rules to be filed with secretary of state. The state central committee of each political party in this state must file a current copy of the rules of government of the party with the secretary of state.

History: En. Sec. 261, Ch. 571, L. 1979.

13-38-105. County committee rules to be filed with election administrator. The county committee of each political party of this state must file a current copy of its rules of government with the election administrator.

History: En. Sec. 262, Ch. 571, L. 1979.

Cross-References

County Clerk and Recorder as Election Administrator, 13-1-301.

Part 2
Committee Structure

13-38-201. Election of committee representatives at primary. (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committee representative by a written statement, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's committee representative positions.

History: En. Sec. 72, Ch. 368, L. 1969; R.C.M. 1947, 23-3401; amd. Sec. 2, Ch. 367, L. 2003; amd. Sec. 88, Ch. 414, L. 2003; amd. Sec. 136, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Cross-References

Rules for determining residence in general, 1-1-215.
Definition of registrar, 13-1-101.
Registered voter, Title 13, ch. 2.
Declaration of nomination, 13-10-201.

13-38-202. Committee representatives as party representatives — county and city central committees. (1) Each committee representative shall represent the representative's political party for the precinct in all ward or subdivision committees formed.

(2) The committee representatives in each precinct constitute the county central committee of the respective political parties.

(3) Committee representatives who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committee representative serves a term of 2 years from the date of election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969; R.C.M. 1947, 23-3402; amd. Sec. 137, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of each gender, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969; amd. Sec. 25, Ch. 365, L. 1977; R.C.M. 1947, 23-3403; amd. Sec. 138, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

13-38-204. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969; R.C.M. 1947, 23-3404.

Cross-References

Filling vacancy in Legislature, 5-2-403.
Filling vacancy in office of state Senator, 5-2-406.
Filling vacancy on Board of County Commissioners, 7-4-2106.
Filling vacancy in county office, 7-4-2206.

13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the state convention of its political party and organize by electing a presiding officer and one or more vice presiding officers. The gender of the presiding officer and the vice presiding officer may not be the same. The committee shall elect a secretary and other officers as necessary. It is not necessary for the officers to be precinct committee representatives.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The presiding officer of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committee representative. If party rules permit the use of a proxy, a proxy may not be recognized unless it is held by an elector of the precinct of the committee representative executing it.

(4) The county presiding officer of the party shall preside at the county convention. No person other than a duly elected or appointed committee representative or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committee representative is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The presiding officer and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973; amd. Sec. 26, Ch. 365, L. 1977; R.C.M. 1947, 23-3405; amd. Sec. 139, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

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